THE CASE OF IMPOTENCY

As Debated in ENGLAND,

In that Remarkable TRYAL *An.* 1613. between ROBERT, Earl of ESSEX, and the Lady FRANCES HOWARD, who, after Eight Years Marriage, commenc'd a Suit againſt him for IMPOTENCY.

CONTAINING

I. The whole PROCEEDINGS, and DEBATES on both Sides.

II. The REPORT of the Seven MATRONS appointed to ſearch the *Counteſs*.

III. The Intrigue between Her and the Earl of SOMERSET, who after the Divorce married Her.

IV. A Detection of ſome Politicks in the Court of King JAMES the Firſt.

Written by GEORGE ABBOT, *D. D.* Lord Archbiſhop of *Canterbury*.

In Two VOLUMES.

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MVSEVM
BRITAN
NICVM

The PREFACE.

THE *Publick having given a general Approbation of the late Tryal, between the Marquis* DE GESVRES *and his Lady, as indeed ſo nice and curious a Subject deſerv'd: I was inclin'd to ſearch our own Law-Books and Hiſtorians, to ſee what adjudg'd Caſes and Precedents we had of the ſame Nature.*

That which is the moſt conſiderable in our Engliſh *Hiſtory was, the Caſe of the Earl of* ESSEX, *and the Lady* HOWARD; *a Caſe that engag'd the Politicks of the greateſt Stateſmen, and the Caſuiſtry of a Monarch himſelf. There has as yet been a great Defect of Information concerning this Caſe, which the Reader will now find ſupplied from an Original* Manuſcript *of Archbiſhop* ABBOT's, *written in his own*

Hand. This Manuſcript *contains an exact Account of all the Artifice and Stratagem uſed in that Affair, and is not only very full and particular upon the Caſe, but lets us into a conſiderable Part of the Secrets and Politicks of King* James's *Reign. I muſt aſſure the Publick, that it is faithfully printed from the Original, which is now in the Hands of a learned Lawyer.*

To make a Collection of this Nature, as perfect as I well could, there is added the Lord Audley's *Tryal, and the Proceedings upon the Duke of* Norfolk's Bill *of* Divorce, *which, as they bear ſome Relation to this Subject, ſo they are now very rare, and valuable. The Duke of* Norfolk's *Caſe, in particular, employ'd ſome of our greateſt Lawyers, who have made ſince very eminent Figures in their Profeſſion, and contains all that can be ſaid upon the Article of* Divorce.

In ſhort, theſe Volumes complete the Account of Caſes of this kind, and I dare promiſe will prove uſeful and entertaining to the Reader.

Inner-Temple.
Oct. 30. 1714.

SOME

SOME ACCOUNT OF Archbiſhop *ABBOT.*

GEORGE ABBOT, *D. D.* was born at *Guilford* in *Surrey*, and bred at *Oxford*, where he became Maſter of *Univerſity College*, *An.* 1604. upon the Tranſlation of Dr. *Bancroft* from the See of *London* to the Archbiſhoprick of *Canterbury*, he was made Biſhop of that See; and in the Year 1611. at the deceaſe of *Bancroft*, ſucceeded him in that honourable Poſt.

An. 1619. He founded a large Hoſpital at the Place of his Birth, himſelf laying the firſt Stone, and endow'd it with a liberal Maintenance.

An. 1621. As he was hunting in *Burnhill* Park, belonging to my Lord *Zouch*,

Zouch, near *Hertford* Bridge, he kill'd the Keeper by chance with a forked Arrow out of a Croſs-bow, as he was ſhooting at a Deer. The Quære was, Whether he ſhould incur the Penalty of Irregularity by this involuntary Manſlaughter, or Suſpenſion? but he was acquitted from either; yet himſelf out of a religious Tenderneſs of Mind, kept a ſolemn Anniverſary Faſt during his whole Life; and made a ſufficient Proviſion for the Keeper's Widow and Children.

He govern'd the Church with great Prudence, and was in much Eſteem with the People and the moderate Clergy, but in the Year 1627. many Diſcontents ariſing, he was by the Clamour of ſome turbulent Perſons, ſequeſtred from his Office and Juriſdiction, tho' in a very ſhort Time he was graciouſly receiv'd again into Favour.

He was an eminent Preacher, and it is univerſally agreed that Gravity, Learning, and Piety, adorn'd his Life. He died at *Lambeth*, *An.* 1633.

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THE

THE CASE OF ROBERT, *Earl of* ESSEX; AND THE *Lady* FRANCES HOWARD.

Written by Arch-Biſhop ABBOT.

Printed from his GRACE's Original Manuſcript.

SOME

MEMORIALS

TOUCHING

The Nullity between the Earl of Eſſex *and his Lady, pronounc'd* Sept. 25, 1613, *at* Lambeth, *and the Difficulties endur'd in the ſame.*

BEing at the Court at *White-Hall*, on the 12th of *May*, 1613, or thereabouts, his Majeſty mov'd me, that I would be a Commiſſioner in a Controverſy to be begun between the Earl of *Eſſex* and his Lady, for the ſeparating of them; and when his Majeſty had ended thoſe few Words with

me, my Lord Chamberlain, who was then in the Gallery, ſpake alſo unto me to that Purpoſe. It was unto me a Matter very ſtrange, having heard before of ſome Diſcontentments between that noble Couple; but never imagining that Matters were come to that Head. My Anſwer was alike to both, *That I did not know the Ground whereupon they intended to move; but that if I were to be a judge in any ſuch Queſtion, I would pray, that other Biſhops, being near the Town and Court, might be join'd with me.* The Perſons that were nam'd then, were, my Lord of *London*, my Lord of *Ely*, and my Lord of *Litchfield*, (for at that Time was my Lord of *Bath* with the Queen's Majeſty at *Bath.)* Beſides, I pray'd both the King's Majeſty, and my Lord Chamberlain, *That before any ſuch Thing were enter'd into, I might ſpeak privately with my Lord of* Eſſex, *for the ſatisfying of mine own Mind*; which by both was permitted unto me. The Day after, I ſent for the Earl, and having private Speech with him, only about the Ability of his Body, and nothing elſe, I found him generally much reſerv'd in Talk, but only avowing the Ability of himſelf for Generation; and that he was reſolv'd never to lay any Blemiſh upon himſelf that Way. I knew not well what to make of this; for I did not then underſtand, that ſome Lords had met before at *White-Hall*

Hall on both Parts, (the Lord Privy-Seal, the Lord Chamberlain, the Earl of *Southampton*, and the Lord *Knowles*, as afterwards I heard) to ſettle an Order by Conſent, how this Proſecution ſhould be; that is to ſay, That a Separation ſhould be made, and my Lord's Honour every Way preſerv'd.

Within a Day or two, coming to *White-Hall*, I had ſpeech with the Lord Chamberlain, in the Gallery going towards St. *James*'s Park. I might not reveal all Particulars of that which paſs'd in private; but yet I told his Lordſhip, *That I had ſpoken with the Earl of* Eſſex, *and I perceiv'd it was like to be a Matter of great Difficulty, and therefore wiſh'd his Lordſhip to be well adviſ'd, before any thing was brought into Publick.* I told him, *That he muſt proceed either upon Confeſſion or Proof: That it was probable, the Earl would not confeſs his own Impotency, for then he blemiſh'd himſelf: That my Lady's Oath in that Caſe, was not ſufficient; and how other Proofs might be had, I could not conceive: That the Earl in open Eſtimation was to be thought an able Man: That his Father was not thought in that Kind unſufficient.* The Lord Chamberlain reply'd, *That, perhaps, the Father's Sin was puniſh'd upon the Son: That it was Truth, that the Earl had no Ink in his Pen: That himſelf had confeſs'd, that he could not know a Woman, and that, before divers Noblemen, and ſome of them his own Friends,*

naming, as I remember, the Earls of Northampton *and* Worceſter, *and the Lord* Knowles. All this while I never dream'd of *impotentia verſus hanc*, but conceiv'd, that they would charge the Earl ſimply with Diſability. The Lord Chamberlain then ſeem'd unto me fully reſolv'd to proceed, and told me whom he would have in the Commiſſion, *The Biſhops of* London, Ely, *and* Litchfield, *the two Chancellors of the* Exchequer *and* Dutchy, *my Judges*; (for ſo he call'd them) *Sir* Daniel Dun, *Sir* John Bennet, *Dr.* James, *and Dr.* Edwards. I told his Lordſhip, *That I lik'd the Perſons very well.* The next News I heard, was about a Day or two after, *That the Commiſſion was out under the Great Seal*; which I wonder'd at, by Reaſon that I thought, that my Words to the Lord Chamberlain being well weigh'd, would have mov'd ſome longer Conſideration. Well: The Commiſſion is brought; it is accepted, and Proceeding decreed; the Earl of *Eſſex* is call'd; the Libel is put in. When we ſaw it, and that it contain'd *impotentia verſus hanc*, moſt of us, who were not acquainted with the Project before, were much amaz'd at it. I told the Council for my Lady, *That they had laid a very narrow Bridge for themſelves to go over:* So ſaid my Lord of *London*, and divers of the reſt; only my Lord of *Ely* was ſtill ſilent. My Lord of *Litchfield*,

Litchfield, two ſeveral Times, utter'd Speeches, as much grieving and repining at this Controverſy: *That he was Ordinary to the Earl of* Eſſex, *and had been in his Houſe at* Chartely, *which he ſaw to be well govern'd; and the Earl did bear himſelf moſt religiouſly therein, to his great Comfort: That his Wife had the Honour to be Couſin Germain to the Counteſs of* Suffolk; *and therefore he had no Reaſon but to wiſh well to the Earl of* Eſſex *and his Lady both. Yet if he had been worthy to be conſulted withal, he ſhould have thought that ſeven Years had been little enough to have deliberated, whether it were fit to bring ſuch a Buſineſs into Queſtion before the World.* Another Time he told us, *That it was very good, that we ſhould proceed with great Warineſs in this Cauſe; for,* ſaith he, *the World looketh on us what we do; and there were not more Eyes upon the Earl's Father loſing his Head, than there be upon the Earl now loſing his Wife.* He told me afterwards, *That he had ill Will for thoſe Speeches, and complain'd that ſome among us did tell Tales of all that was ſaid and done.* (And ſo it appear'd afterwards, that Sir *J. Cæſar*, and Sir *Daniel Dun* did.) Sir *Thomas Parry*, in all his Speeches, privately murmur'd againſt this Nullity, till he came to *Windſor*; where, the Day that the King heard us, the Lord Chamberlain, in my Preſence, ſpake privately with him and Sir *Julius Cæſar* about this Matter;

and from that Time forward, Mr. Chancellor of the *Dutchy* was alter'd. My Lord of *Ely*, alſo, for a great while, was in Diſlike of the Separation, (as I have credibly heard he open'd himſelf to Sir *Henry Savile*) until ſuch Time as the King ſpake with him, and then his Judgment was reform'd. But Truth it is, that among us he ſaid nothing.

Now the Earl's Anſwer is taken, which appeareth. In it there were divers Things very obſervable. He us'd no ill Speech of his Lady, for which we all much commended him. I gave him ſo ſtrict a Charge to ſpeak the Truth, requiring him, as he would anſwer me before God at the laſt Day, to deliver nothing for Favour or Affection, but to inform us in the Verity, that it wrung from him ſomething which I ſuppos'd he intended not to ſpeak ſo plainly. He gave the Reaſon of his having no Motions to know his Lady carnally, and of his thinking that he never ſhould. *When I came out of* France *I lov'd her*; *I do not ſo now, neither ever ſhall I.* When he was to anſwer to the Article, that ſhe was *Virgo incorrupta*; he ſmil'd, and ſaid, *She ſaith ſo, and ſhe is ſo for me.* Sir *Daniel Dun* catch'd theſe Words, and bid the Regiſter ſet down then, *credit articulum eſſe verum.* Theſe Things gave me no great Encouragement to the Buſineſs; but yet being at very little

tle Leiſure, I let Matters go on, and in mine own Part reſolv'd nothing. Then the Witneſſes were depos'd, but not publiſh'd. The Inſpectreſſes were choſen, who came moſt unwillingly unto it, and howſoever Sir *Julius Cæſar*, and Sir *Daniel Dun*, (whom we never ſuſpected to be as Parties in the Cauſe, as afterwards they appear'd to be) made all clear and fair Weather; yet my Lord of *London* told us openly, *That he being with them, found that the Ladies knew not well what to make of it; that they had no Skill, nor knew not what was the Truth; but what they ſaid, was upon the Credit of the Midwives, which were but two, and I knew not how tamper'd with.* Then came the Lady *Francis*, to take her Oath, with the ſeven Compurgators. I noted therein ſome Things. A Paper was brought, containing *Verbis præciſis*, what her Ladyſhip would ſwear. We ſaw it, and conſider'd it, and found it too bare and ſlight to enforce any thing. The Commiſſioners advis'd, that it ſhould be more full. Dr. *Steward* accordingly drew it; but he muſt go forth to the Lady, to know whether ſhe would ſwear it. At laſt it was agreed unto. When ſhe came to ſubſcribe it, after the Oath taken, one or two of her Brothers ſtanding at her Back, put her in Mind, that ſhe muſt not write her Name *Francis Eſſex*, which ſhe moſt willingly remem-

ber'd, and ſubſcrib'd *Francis Howard*. We ſaw my Lord of *Litchfield*'s Wife to be one of the ſeven. We were afterwards inform'd very credibly, That the Lady *Knevet* had declar'd her Sorrow, that ſhe was us'd in ſuch an Action, and ſaid, *That ſhe wept all the Day about it.* Theſe Things pleas'd me little, that Nobody took Comfort in the Buſineſs.

Things go on in a Courſe 'till *Midſummer-Day*. Then did the King deal with me privately, as if he had receiv'd divers Complaints againſt me. The firſt was, *That we delay'd the Proceeding, in as much as the Meeting was put off, from the* 18*th of* June, *'till the* 2*d or* 3*d of* July. My Anſwer was, *We had rather gone too faſt: We had ſate Forenoon and Afternoon: The Term now grew to an End, and we had many Buſineſſes to diſpatch of the King's: That the Commiſſion-Day for Cauſes Eccleſiaſtical was put off for a Week, by Reaſon of* Midſummer-Day *falling on a* Thurſday; *and conſequently, that our Proceeding in this Cauſe, which commonly attended the other Commiſſion, was of Neceſſity to be defer'd.* But my principal Anſwer was, *That we could not ſhorten it; for the Council on both Parts, had agreed upon that Day in* July, *and ſo it was upon the Acts: Howſoever, therefore, the Council for my Lady mov'd openly in Court to abreviate the Time, yet the Council for my Lord would not renounce*

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nor alter their Term probatory, but kept them close unto it. Another Objection was, *That I acquainted not the King, from Time to Time, how Matters did go.* I answer'd, *That I knew not my self; for as yet there was no Publication of Witnesses. When any thing came to my Knowledge, his Majesty should understand it.* It was added, *That divers Persons repair'd unto me, who wish'd not well to the Business. Belike,* said I, *they mean the Earl of* Southampton, *who came in the other Day, when we were all sitting together. But his Coming, was about* John Cotton's *Cause; and I never had a Word with him in all my Life, touching this Business. No,* said the King, and smil'd, *it is Sir* Henry Nevile. *Indeed,* quoth I, *he was with me the other Day, and this very Morning: But your Majesty well knows what was the Reason. It was touching that Cause, which your Majesty commanded me to send for him about. I deliver'd him your Mind the one Day, and he gave me an Answer the other.* At this Time, his Majesty cast out some Words, as if he wish'd well to the Nullity; but it was so obscurely, that I did not conceive that earnestly he desir'd it. After this Day, the Complaints were many which were made to the King against me, and many Threats were us'd, and divers Tricks were play'd, to urge me to yield to the Nullity. One was, *That I should suffer the Earl of* Essex *to go out of Town.* I an-

ſwer'd, *He had made his Anſwer, and had his Proctor, and it was our Cuſtom then not to ſtay Men.* His Majeſty commanded me to enquire, if his Preſence were not neceſſary; and if it were, then I ſhould ſtay him. I ſent to Sir *Daniel Dun*, to Sir *John Bennet*, and to Dr. *Steward*; and they all agreed, that there was no need of his Lordſhip's being in Town. And of this I ſent Word to the Lord Chamberlain, and my Lord of *Eſſex* was permitted to depart. One while it was given out, that I was mov'd by the Queen to croſs them; when, in Truth, I had not ſpoke with her thereabout: Another while, that I had ſpoke with the Earl of *Eſſex* at firſt, and hence his Lordſhip grew leſs pliable; when they knew what about it was, and were told of it before. And it was not forgotten, that when I gave Charge to the Earl of *Eſſex*, to anſwer truly to the Poſitions in the Libel, I nam'd the Caſe of my Lord of *Devonſhire* and the Lady *Rich*, as if I had compar'd this Cauſe unto theirs. When afterwards the Earl's Council took Exception to the Libel, it was given out, that they were animated by me to oppoſe; whereas I never ſpake with them, nor knew any thing of their Purpoſe. And ever that was one, that there were Delays us'd. Yea, it was to my Face deliver'd as a Threat, that Arch-Biſhop *Grindall* had been overthrown for not giving Conſent to

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the Divorce of Dr. *Julio*, as implying, that the ſame would be my Caſe.

About this Time, the Lords, and the reſt of the Feofees, were to meet at Mr. *Sutton*'s Hoſpital, about the Settling of it. The Day that we were to come thither, my Lord Chamberlain in the Privy-Gallery at *White-Hall*, ſhew'd his Anger towards me, that we had not ſent for the Keys to his Lordſhip, and that he might deliver over the Cauſe. But when I came to the *Charter-houſe*, there was deliver'd me a Letter, written all with my Lord's own Hand, and directed to the Lord Arch-Biſhop, the Lord Chancellor, and the Lord Privy-Seal; wherein he did twice take Exception to me by Name, and, in a Sort, brav'd me, that ſo he might pick a Quarrel to me; whereunto I reply'd not, but bore it with Patience.

A little before *Whitſontide*, his Lordſhip was very kind to me, and of his own Accord proffer'd me a Chamber at *Greenwich*, which my Lord, my Predeceſſor, had; but after twice Proffering of it, and my Accepting of the ſame, his Lordſhip fell off ſtrangely, and I never ſpake of it more. Theſe Complaints and Threats made me to ſuſpect all was not well; for what needed theſe Things to me, in a Matter of Juſtice?

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The Time now grew on, that his Majeſty was to go abroad in Progreſs on a *Sunday*, which was the Day before the Council for my Lord, were to put in their Anſwers and Exceptions to the Libel. The Lord Privy Seal ſhew'd me a Letter of the King's to his Lordſhip, wherein he was to expoſtulate with me, for delaying the Buſineſs. I gave his Lordſhip Anſwer what was done, and he profeſs'd that his Lordſhip was ſatisfy'd, and that no Man could do more than I did. On the *Monday*, the Council for my Lord, put in their Anſwer, which was round and picquant. The Lord Chamberlain had Notice of it, and complain'd thereof to the King. I ſent his Majeſty the Copy thereof, and receiv'd from the King a Letter, written all with his Majeſty's own Hand, ſhewing Diſlike thereof. At that Time, Sir *William Button* threaten'd Sir *Daniel*'s Servant hard for that Anſwer, as the ſaid Sir *Daniel* divers Weeks after told me. The Commiſſioners conſider'd of the Anſwer, and diſallow'd it, giving Order, that no Record ſhould remain of it, but that it ſhould be utterly defac'd. This was very well accepted, and now my Lord of *Canterbury* was a very honeſt Man. But 'till this was done, their Followers gave out, that the King had in two Letters

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ſo ſchool'd the Arch-biſhop, as he was never ſchool'd in all his Life.

Things now being quiet, I call'd Sir *William Button* one Commiſſion-Day unto me, and ſpake thus to him: *Sir* William Button, *you have follow'd this Buſineſs from the firſt, and have been preſent at the acting of all Things. Have you ever ſeen me, in Word or Deed, done any Matter that doth not become me?* (for indeed hitherto I had no Way declar'd my ſelf, becauſe we were not come to conſider of the Proofs.) *What is then the Cauſe that I am thus complain'd upon, that I cannot one Day be quiet?* His Anſwer unto me, was, *That the Lord* Chamberlain *was every way a kind Father to his Children, but in this of his Daughter, he was ſo Paſſionate, 'till it had an End, that he lay as on a Grid-iron, broiling 'till the Matter were accompliſh'd.* Quoth I, *It ſhall not be delay'd by me.* Now, the Council on both Sides grew on to inform us, wherein I noted, that whereas the Libel was laid in Nature of *Maleficium verſus hanc*, my Lady's Council upon the ſhutting up of the Cauſe, would not apply themſelves thereunto, neither would they willingly hear of it; which ſeem'd ſtrange, ſince all the Books which they brought, particularly to the Cauſe, did mention that; and Doctor *Steward* had publickly and expreſſively ſaid, *That it was that which*

which they did mean. This troubl'd me ſomewhat, becauſe I perceiv'd that they themſelves could not tell what to make of it. But afterwards fell out another Matter, which very much alienated my Judgment from the Cauſe: It appear'd, that Sentence could not be given, 'till the Time that the King entring his Progreſs, was gone as far as *Windſor*, and then his Majeſty was ſoon to depart to *Farnam*. Sir *Daniel Dun* told us, *That he was to attend the King in Progreſs; that he muſt be at* Farnam; *that he was Old and Lame; that it would be too great a Trouble for him, to come back again at the Day of Sentence.* He therefore pray'd, *That we would hear him deliver his Judgment of the whole Matter.* This Proffer ſeem'd wondrous ſtrange to moſt of us, and putting it by handſomely, we reſolv'd not to trouble him therewith: And in this Opinion we aroſe. But afterwards my Lord of *Litchfield* cometh to my Study Door, where I and my Lord of *London* were about another Buſineſs, and telleth us, That my Lord of *Ely*, and Mr. Chancellor of the Exchequer, were very deſirous to hear Sir *Daniel* ſpeak; and that he, for his Part, was of the Mind that it would do very well, and therefore he importun'd us both to give Conſent unto it; we imagining no great harm could come thereby, aſſented, and the next Day

Day is appointed for that Purpoſe. There Sir *Daniel* cometh with a formal Declaration, divided into ſix Parts, to every one of which, he ſpake ſo largely, that with a little replying of ours, it ſpent a whole Afternoon. Matters which I moſt obſerv'd therein, were theſe: He told us, *That by our Commiſſion, we might hear this Cauſe ſummarily.* He brought a Book, *That he who hath Power to hear a Matter ſummarily, is in Nature of an Arbiter choſen by both Parties, and therefore may judge in Diſcretion, as he ſhall think fit*; and more to that Purpoſe. I thought with my ſelf, that this was ſtrange Doctrine in a Matter of Marriage; that as Arbitrators, we might adjudge a Wife to her Huſband, or not adjudge her, according to our Diſcretion. In his diſcourſing of my Lord's Impotency, *Verſus hanc*, he beat upon the Matter of *Maleficium*, and yet by no Means he would have it to be that apparently. He inſiſted much, *That the Sentence was to be given in General Terms, not naming any particular Impotency.* I told him, *In ſuch a Sentence, the World look that we ſhould yeild a Reaſon of that which we did.* He reply'd, *That it was fit to give no Reaſon. And here,* ſaid Mr. Chancellor of the Exchequer, *a Judge is not to give a Reaſon of his Sentence, but only to God. I would give no Reaſon to any Prince in the World.* I was once call'd

call'd before Queen *Elizabeth*, about a Sentence which I gave, and ſhe demanded of me the Reaſon thereof; I told her, *A Judge was bound to give no Reaſon of that which he pronounc'd, but only to God.* I marvell'd much at theſe Things, and at laſt reply'd, *Well, let it be, we acquaint not the World with the Reaſon of that which we do, yet is it not fit, that I who am the Judge, and muſt pronounce the Sentence, know the Ground of that which I am to pronounce.* Here, after a little pauſing, one of them ſaid, *Yes, for you may ſee that in the Books and Depoſitions.* Quoth I, *But I cannot ſee that there which may ſatisfy me. But Mr. Chancellor ſaid, I, and Sir* Daniel Dun, *Commiſſioners, you perhaps be not driven to it, yet I ſhall be forc'd of Neceſſity to tell Men the Reaſon of the Sentence: For as ſoon as this Cauſe is ſentenc'd, every Man who is diſcontented with his Wife, and every Woman diſcontented with her Huſband, which can have any reaſonable Pretence, will repair to me for ſuch Nullities. If I yeild unto them, here will be ſtrange Violations of Marriages; if I do not, I muſt not tell them, that it was fit for my Lord of* Eſſex, *but it is not ſo for you; for the Law knoweth no Perſons, but is indifferent to all. If I then repel them, I muſt ſhew a Reaſon: Your Caſe is not like that of my Lord of* Eſſex; *for his Caſe was thus, yours is thus. And ſo muſt I deliver the*

Reaſon,

Reaſon, or Men will not be anſwer'd. In this Time of debating, I ask'd Sir *Daniel Dun, I pray you Maſter of the Requeſts, what Examples have we of any Nullity in* England, *pronounc'd in this kind? Might a Man ſee any Precedent of it? For I would be loath to do a thing, that never was done before. Yes,* ſaith he, *there be Precedents thereof. In* Anne *of* Cleve's *Caſe, we have an Example, and another in one* Berry, *which I have here in my Book*; and thereupon out of a Note-Book of his own, he read now a Line or two, and then two or three other Lines in another Place, and ſo forward. My Anſwer was, *I did not think that King* Henry's *Separation from* Anne *of* Cleve, *was for any ſuch Matter, but upon a Precontract.* I ſaid, *King* Henry *the* VIIIth *was a ſtrange Prince in that kind: He put himſelf into many Marriages; and when he began that with* Anne *of* Cleve, *he fear'd leaſt the Emperor, and King of* France, *ſhould combine with the Pope againſt him, and therefore he was deſirous to ſtrengthen himſelf with the Proteſtant Princes in* Germany; *and for that he thought this Marriage was much behoveful. But afterwards growing into Peace, with one or both of thoſe Princes, he grew ſoon weary of the Marriage, becauſe he lik'd not the Woman.* But then I promis'd to conſider further of theſe two Caſes. This was the End of that

Day's Labour, which, when at Night I had recounted with my ſelf, I thought it was an audacious Part, for ſuch a one as Sir *Daniel* was, to teach us out of ſuch poor Grounds, both what to do, and how to do. I found by my Obſervation, that it was a ſet Match, that thus he ſhould be heard; that he was prepar'd for the Purpoſe: For no Man upon the ſudden, or one Day's warning, could deliver ſo much, and ſo digeſted. And now I began to aſſure my ſelf, that he did not ſhew himſelf a Judge, but was a Stickler for the Nullity. I much ſuſpected the Conſcience of the Man, knowing him reaſonably well before, both out of mine own Eſtimation of him, and out of the Judgment of my two Predeceſſors, the Lords *Whitgift* and *Bancroft*, who held him for a Man moſt corrupt. Yet the next Day I ſent unto him for his Note-Book, and I caus'd the Record of *Anne* of *Cleve*, to be brought unto me. Reading over all the latter, I found not one Word tending to the preſent Caſe. *Good Lord! thought I, how doth this Man deceive me!* Peruſing his own Book for that of *Berry*, I found it to be nothing but the Pleadings of Advocates on both Sides, when about the 40 of *Eliz.* there was ſome Queſtion in the Common Law Courts, about *Berry*'s Land, *Berry* himſelf being dead many Years

Years before. But I ſaw more in this Book againſt the Cauſe now in hand, than for it; and by ſome other Writings in my Houſe, I diſcover'd that *Berry*'s Divorce, *Anno* 1561, was for want of his Stones, which Dr. *Steward* alſo, being now of Council for my Lady, and who formerly ſtood for *Berry*'s Brother againſt the ſuppos'd Son, publickly acknowledg'd. Theſe Things made me in my Heart much diſlike the Cauſe, and procur'd in me a hard Opinion, touching Sir *Daniel Dun*, who ſhould not have wrong'd me, being my Officer, as Dean of the *Arches*.

Within few Days after, the Meſſage cometh to us, that we were all to attend the King at *Windſor*. This accordingly was done. The Morning before the Hearing, the Lord Chamberlain in my Preſence, ſpoke firſt earneſtly with the Chancellor of the Exchequer, and afterward with the Chancellor of the Dutchy, who that Day fell from us, as appear'd by the few Words that he had before the King. Some few Days before that, had Sir *John Bennet*, by Sir *William Button*, and Dr. *Edwards*, been otherwiſe dealt withal, earneſtly to give Conſent to the Nullity; but that Day we dealt in it more than three Hours. His Majeſty propounding the Matter, ask'd, *How Things did ſtand?* Sir *Julius*

lius Cæſar ſaid, *That Sir* Daniel Dun *was beſt able to ſpeak unto it.* And then, *ex compoſito*, Sir *Daniel* begins, and tells a great Tale, and eſpecially inſiſteth upon *Non potuit.* When he had done, I anſwer'd him, and ſhew'd the want of Ground for that Concluſion, out of other the Earl's evident Anſwers, *That the* Non potuit *was for lack of Love, and not for want of Ability.* I challeng'd Sir *Daniel*, for abuſing the King with a falſe Report, and eſpecially for his two Precedents of *Berry*'s Caſe, and that of *Anne* of *Cleve.* Amongſt us, was divers ways ſhew'd the Inſufficiency of the Proofs; that the Libel was laid ſhort to the Cauſe, and the Proofs were ſhort of the Libel: That we had very many Times call'd upon the Council for my Lady, that they ſhould look that they rightly laid their Matter, and made their Proof ſtrong; that in the End, they complain'd not of the Judges, when the Fault was in themſelves: (Where my Lord of *Litchfield* added, *That himſelf fearing the worſt, had gone to the* Doctors-Commons, *and warn'd the Council for my Lady, that they ſhould look to it.*) Among other Things there utter'd, Sir *Daniel Dun* ſaid, *What a Diſgrace will this be to my Lord Chamberlain and his Daughter, if it ſhould not now go forward?* My Anſwer was, *They ſhould have look'd to that before they did*

did begin it: We were not the Men that ſet the Matter on Foot; if it were a Diſgrace, they put it on themſelves. But, quoth I, *muſt I, to ſave any Man from Diſgrace, ſend my Soul unto Hell, to give a Sentence whereof, I ſaw no Ground? I will never do it.* My Lord of *London*, Sir *John Bennet*, and Dr. *Edwards*, did carry themſelves well that Day, altho' Sir *John Bennet* had much Oppoſition from the King himſelf. When we ſaw the King earneſt, I fell down on my Knee, and with Tears in mine Eyes, I ſaid, *I beſeech your Majeſty, if ever I have done you any Service, whom I do ſerve with a faithful Heart, or may do you any Service, rid me of this Buſineſs.* I had ſaid before, *That I was the unfitteſt Man that might be, to judge of ſuch a Cauſe; I was no marry'd Man, I was no Lawyer, and I had not had the Time, by reaſon of my infinite Buſineſſes, to read ſo much of that Matter, as other Men had.* I obſerv'd that Day, many Things in his Majeſty's Carriage, of the Matter: He was Earneſt, but Gracious and Moderate. He found Fault with the Libel, and ſaid, *That Complaints were made, that we went too ſlow, but he perceiv'd we went too faſt.* He marvell'd that my Lord of *Worceſter*, and the Lord *Knowles*, were not examin'd as Witneſſes. He conſtantly profeſs'd, *That he believ'd that my Lord of* Eſſex, *was Impotent for a Woman.*

He

He told us, *That ſome of the Earl's Friends had put a Woman to him, and he would not touch her.* His Majeſty ſaid, *That the Earl was once purpos'd to have gone to* Poland, *to have try'd whither he might be unwitched.* To which Things my Reply was, *I would to God we might ſee theſe Things legally prov'd. That his Majeſty much diſlik'd that Courſe, and therefore he ſet the Courſe now in Proſecution; and therefore if there were any Error in it, he had done the Lord* Chamberlain *wrong, and he muſt take it upon him.* In ſum, I found his Majeſty much troubled what to do, as I gather'd, eſpecially by theſe Words, If my Lord of *Canterbury*, and my Lord of *London*, have a Negative Voice, we muſt either begin all again, and have a new Libel, or we muſt have a new Commiſſion, and put other Adjuncts. The Concluſion from his Majeſty was, That we ſhould all meet at *Lambeth* on the Morrow, and if we could unanimouſly conſent, then go to the Sentence; if not, we ſhould put it off unto another Day, and certify him of it, and ſo farther underſtand his Pleaſure. When the King was riſen from his Chair, he fell to inveighing againſt theſe Marryings of young Couples, before they be acquainted one with another. He told us the Inconvenience of it, how he knew in *Scotland*, a Father who marry'd his only Child

Child to a Man againſt her Will: That ſhe withſtood it; yet her Father forc'd her to marry him: That being gone Home with her Huſband after a very few Days, ſhe came run away from him: That her Father jerk'd her, and ſent her home again: That not long after, ſhe poyſon'd her Huſband, and was burnt for it, while the King was in *Scotland*. After his Majeſty's going out, I follow'd him, and told him, I evidently perceiv'd, that it was in the Earl of *Eſſex Vitium Animi non Corporis*. His Majeſty ſwore he thought ſo. There paſs'd ſome other Speech from the King to me, touching his own Lying with the Queen the firſt Night that he marry'd her. But, at the laſt, I kiſs'd his Hand and departed. After I was gone, the Lord Chamberlain ſpeaking ſomewhat againſt me, the King reply'd, *The Arch-biſhop hath ſo adjur'd me to be rid of this Matter, that I cannot tell what to ſay to him.* This did Sir *Julius Cæſar* tell me that Day at Dinner, at *Eaton College*, letting me know, that the King found no Fault with me. But afterward, the King coming to Dinner, after his Meat had ſtay'd for him on the Table more than a Quarter of an Hour, he ſate him down in his Chair, and caſting his Leg over one Side of it, he eat no Meat for a great Space of Time, neither ſaid he any Word, but ſate muſing to himſelf;

which every Man obſerv'd. And it was given out by ſome in the Court, that I was gone away in the King's Diſpleaſure. Within ſome few Days after, it was alſo more Ways than one brought credibly to my Ears, That the Arch-biſhop and my Lord of *London*, ſhould be hereafter kept to their Spiritualities, and ſhould meddle no more in temporal Matters: And within a while it came ſo far, as that they ſhould have their Temporalities taken from them. Sir *John Bennet* was at *Windſor* mov'd by Sir *Thomas Lake* in the Lord *Fenton*'s Name, and afterwards by the Lord *Fenton* himſelf, That he ſhould alter his Opinion, and make his Peace with the King, for his Majeſty was not well pleas'd with him.

As I came Homeward from *Windſor* in my Coach, and all that ſame Night, two Things did run much in my Mind; the one of them was, What a ſtrange and fearful Thing it was, That his Majeſty ſhould be ſo far engag'd in that Buſineſs: That he ſhould profeſs, that himſelf had ſet the Matter in that Courſe of Judgment: That the Judges ſhould be dealt withal before, and, in a Sort, directed what they ſhould determine: That the like Example had not been ſeen: That his Majeſty did win himſelf much Honour in the Caſe of *Sutton*'s Hoſpital, that, notwithſtanding all Importunity, he had ſuffer'd the Judges to do

do their Conſcience. This ſtrange moving to the contrary, did make me marvelouſly ſuſpect that it was no direct Matter; and, as a dutiful Servant to my moſt gracious Maſter, I wiſh'd in my Heart, that his Majeſty's Hand might be taken off the Buſineſs. The other Point was, That we had all this while, in our Debatings, never, or very little, meddled with Points of Divinity. And I thought with my ſelf, that much might be ſaid therein, againſt *maleficium*, and the Nullity to be pronounc'd thereupon *verſus hanc*; for out of this we could never get in all our Talking, though they would never cleave faſt to it. I therefore, having formerly revolv'd ſome ſuch Things in my Mind, roſe early on the Day that we were to debate Things at large, and ſet down my Mind in writing out of ſomething in Divinity. The Copy of this appeareth. The Day after we came from *Windſor*, being *Tueſday*, we met, and all the Forenoon we inſiſted on that which I had briefly written: But to deliver my Conſcience freely before God, I receiv'd no kind or ſhew of Satisfaction. My Lord of *Ely* ſate little leſs than Dumb, as if he had never dream'd of any ſuch Matter. Divers of the Commiſſioners wonder'd at him, that he, who had ſpent ſo much Time in reading of the Canoniſts touching this Queſtion, ſhould not think upon Divi-

nity. Briefly up and down by others ſomewhat was ſaid, but nothing to Contentment. After Dinner, Sir *John Bennet* propounded Reaſons out of the Law, but without any Satisfaction. I obſerv'd two ſpecial Points that Afternoon: The one was, That we all thought my Lord of *Eſſex* his Anſwer to the Libel, was neither plain nor ſufficient. And now it was remember'd, that my Lord of *Litchfield* had put to him certain Queſtions, that four Things were neceſſary to Generation; *Membrum virile*, Erection, Penetration, and *Ejaculatio Seminis*; which, altho' they were then ſmil'd at, and ſince that Time much Sport had been made at the Court and in *London* about them; yet now our marry'd Men on all Hands wiſh'd that punctually his Lordſhip might have been held to give his Anſwer unto them. This inſtructed me, that the Proofs were not full. A ſecond Thing was, that when towards the Evening, I wiſh'd that a Reconciliation might be labour'd between my Lord and my Lady, that it ſhould beſt become us, my Lord of *Ely*, who from the firſt Beginning of the Proceſs, had been always very ſilent, ſpake home about that, much diſliking that any ſuch Thing ſhould now be ſought; that it was too late; that it might be the Cauſe of poyſoning and deſtroying one of another, to bring them together again.

Well,

Well, when we could not agree upon our Concluſion, we were inforc'd to put all off unto a longer Day; and as the King commanded, I was to certify his Majeſty of it. I wrote a Letter to the King, praying humbly that I might be freed from the Trouble of this Cauſe, or, at leaſt, give no Sentence in it, 'till I were a marry'd Man, and ſo might better underſtand the Buſineſs. I inclos'd alſo ſix Reaſons of Sir *John Bennet*'s taking Exceptions in Law againſt the Nullity. And withal I joyn'd mine own Reaſons in Divinity, of which I ſaid in my Letter, that I knew not where to ſeek an Anſwer to them; meaning, that the Commiſſioners had given me none. Theſe Reaſons afterwards coſt me a great deal of Trouble.

The next Progreſs in this Controverſy, was, that I was advertis'd, that it was his Majeſty's Pleaſure that the Cauſe ſhould be put off until the 18th of *September*; and withal there was brought a new Commiſſion of Adjuncts, whereinto my Lords of *Wincheſter* and *Rocheſter* were put. The Day that I perceiv'd this, acquainting the two Chancellors of the Exchequer and Dutchy therewith, in the Gallery at *Lambeth*, I told them, *That I hoped now, that for my Part, I ſhould be freed from any Trouble therein farther, for I did deſire to be rid of it.* They both anſwer'd me, *That they deſir'd in like*

like ſort to be quit of the Matter. A good Buſineſs, thought I, that no Body taketh Comfort of it, unleſs it be Sir *Daniel Dun*, of whom I forgot before to note, that on the Day of meeting, next after our coming from *Windſor*, he, with a great deal of Inſolency, challeng'd me for my Speech before his Majeſty, the Day before. *Do not abuſe the King, Sir* Daniel Dun. I remember'd it was in mine own Houſe, and if I had rattl'd him according to his Deſerts, my Lord Chamberlain would have ſaid it had been done for his Sake; and in the Progreſs, Sir *Daniel* having the King's Ear, would have made Things worſe than they were; and I therefore forbore him with ſuch Patience, that ſome of the Commiſſioners told me afterwards, that they wonder'd how I could endure thoſe Behaviours, at the Hands of a Man of his Quality: But yet they commended me for it. Now grew I to conſider what were the Reaſons why theſe two Commiſſioners were joined to us; and therein I had many Advertiſments from divers Friends, divers Ways. We reſolv'd for my Lord of *Winton*; that it was ſuppos'd, that there was no great Amity between him and me; that when I was Dean there, there was ſome Diſagreement between us, which they ſuppos'd yet continu'd: That he had an old Grudge to me, for having the Archbiſhoprick, which his Lordſhip

Lordſhip ſo much deſir'd. Beſides, it was ſome Tickling unto him, that his Gravity and Learning ſhould either win in the Arch-biſhop, or lay ſome Blemiſh upon him, if he ſtood out. Certain it is, that Sir *William Button* was with him; and, doubtleſs, would tell him how acceptable this Service would be to his Majeſty. I heard of good Credit and ſecretly, That he was put in hope to be made a Privy-Counſellor; and the Fame was general, That for the Father's Labour, the Son ſhould be made a Knight. It ſeemeth at the firſt, that he had no great Fancy unto it; but being wrought upon, he conſented; ſo that he might be required by his Majeſty to be preſent. This was done by a Letter from *Saliſbury*, which, at his being at *Lambeth*, he ſhew'd me; that I ſhould take Notice, that he had not come, unleſs he had been commanded. I leave him for the Time, only ſignifying, that in the Vacation, he ſent for divers Books from *London*, and had Dr. *Steward* much with him, to inform him in all Particulars. Yet I may not forget, that while he held off his Conſent, ſome hard Opinions were rais'd of him at Court; as I found by a Letter from my Lord of *Litchfield* to me. For there he was found Fault with, that he attended not the King at *Farnham*, or at *Andover*. And there Blame was laid, that Mr. *Love*, who was

ſo great with my Lord of *Winton* was like to get the Warden's Place at *Wincheſter*, Dr. *Harmar* being reported to be dead. Concerning the Biſhop of *Rocheſter*, it was well known that he had open'd himſelf before the King's going in Progreſs, that he lik'd well of the Nullity. Coming once or twice while we were about it, he, with ſome in my Houſe diſputed earneſtly for it. He was a great Dependant of my Lord of *Litchfield*. This was a Way to make him well eſteem'd, and to ariſe high in Preferment. But, in Truth, he ſhould not have verify'd the Report which Arch-biſhop *Bancroft* on his Death-Bed gave of him, together with *Butler* and *Carrier*, to the King by a Meſſage, unleſs he did ſome ſuch Thing. When he was put into the Commiſſion, he in divers Places ſeem'd to be much offended, that he was made one. His Grief was, that he was ſet in Oppoſition againſt me: He would never give his Voice to it, unleſs I conſented. Theſe, and the like Things, he ſpake, as elſewhere, ſo to ſome of my Servants in my Houſe at *Croydon*: For, under another Colour, he came three Times in the Vacation to me; but I never ſpake a Word with him about that Matter, as knowing it would be an Argument againſt me, that I labour'd to draw away the King's Commiſſioners; and the End ſhew'd, that I had no great Rea-

ſon

ſon to truſt him. Beſides theſe two Adjuncts, the new Commiſſion it ſelf ſeem'd very ſtrange unto me. There were eight made of the *Quorum*; and it was ſo laid, that if three of them, with two other, conſented, the Sentence might be given; ſo that, by the Words thereof, if ſeven had deny'd, five might have pronounc'd and prevail'd. A Matter ſo uncooth, that, as I credibly heard, my Lord of *Winton* himſelf found much Fault therewith. Again, there was a Clauſe, *Legibus, Statutis, Ordinationibus, Conſtitutionibus quibuſcunque non obſtantibus*; ſo reſolv'd they were to have it diſpatch'd. Every thing now ſtood at a Pauſe; and my Lord of *Ely* (who, at firſt, deliver'd his Judgment againſt it to Sir *Henry Savile*, as I heard it avow'd upon good Credit; but afterwards ſaid, he was better inſtructed by the King) began to hearken what Men ſaid of the Matter, as appeared by Speech which he had with Sir *John Paiton*; to whom, notwithſtanding, he told ſome Things of the Inſufficiency of my Lord of *Eſſex*. The Weather grew fair; he hop'd the overflowing of the Iſle of *Ely* would ceaſe; he would go down in his Viſitation; he came and took his leave of me, but not one Word of the Nullity.

Now was his Majeſty abroad, and I had more Leiſure to conſider of this Queſtion.

I read what I could; I confer'd with many Men about divers Circumſtances, ſo to inform my ſelf the better. I pray'd frequently to God to direct me aright. I often perus'd the Depoſitions, but I found little Satisfaction. I perceiv'd moſt of the Lords had a great Diſlike of this Proceeding; that the better Sort of Men had generally a Deteſtation of it; that the Judges and Lawyers much condemned it. I heard many ſtrange Stories of the Lady's Carriage. Something was freely ſpoken of a Woman arraign'd at *Bury*; and how to ſhut that up, and ſo to free the Earl, this Courſe was conſented upon.

Theſe Things, though out of Charity I entertain'd not as abſolutely true, yet the Concurrence of them from ſo many, made me that I could not contemn them. Beſides, now grew the Rumour ſtrong, that a new Huſband was readily provided for her: Whereof I call'd to Mind the Opinion of Sir *Henry Nevile*, deliver'd to me at *Windſor*; and I did not forget a Speech of *Overbury*'s, once to me in that Kind. I underſtood, that at *Chriſtmas* laſt, there was a Reconciliation wrought between the Earl and his Lady, howſoever it fell out. Yea, that when the Lords met at *White-Hall* about the Manner of Separation, there was three Times that Day a Likelihood to make them Friends; which we thought

thought imply'd no Diſability of my Lord of *Eſſex*, even in their own Opinion. I farther underſtood, that whereas it was whiſper'd among us, the Commiſſioners, That at *Chriſtmas* laſt, my Lord of *Eſſex* being in Bed with his Lady, ſhould labour a quarter of an Hour carnally to know her; and in the End ſhould ſay, Frankey, *it will not be*, and ſo kiſs'd her, and bid her good Night: That this was not true; but that the Earl, the Night before his going from *London*, at the End of *Trinity* Term, ſaid with Tears in his Eyes, *That when he went to Bed to her at* Chriſtmas *laſt, he had forgiven all Things as clearly as he wiſh'd that God ſhould forgive him his Sins; but when they were alone, ſhe revil'd him, and miſcall'd him, terming him Cow, and Coward, and Beaſt:* And he added, *that ſhe was as bitter a Woman as any was in the World: Which Things ſo cool'd his Courage, that he was far from knowing, or endeavouring to know her.* Theſe Matters, together with the ſmall Joy which the Commiſſioners had to deal in the Buſineſs, made me have no great Fancy unto it. On the other Side, I heard that my Lord Chamberlain, or his Followers, gave out, that what was done, was perform'd by the King's Direction, otherwiſe it had not been begun; and therefore, they expected that his Majeſty ſhould ſee it effected; that they reſted

themſelves on him. I was much griev'd that they had this Advantage on my Maſter, who being ſo engag'd, as I thought, could not well go backward or forward: And, to increaſe my Sorrow, I was privately advertis'd from Court, that his Majeſty did mean himſelf to give an Anſwer to my Reaſons above-mention'd. I heard another Way, that his Majeſty in the Progreſs wrote much with his own Hands. From another Friend I was told, That the King with his Anſwer to the Reaſons, had written to me a ſharp Letter. Yea, by another I learn'd the Contents of the Letter, which was full of Sharpneſs.

Theſe Things in the Summer kept me full of Expectation of ſome great Diſcontentment. Yet my heart ſtill aſſur'd me, that I was guilty of no Wickedneſs. I found all Perſons with whom I ſpake of my Mind, for the Diſlike of the Nullity. In many Buſineſſes to and from the King by Letters, I found nothing but well. His Majeſty ſent me Warrants for three Bucks, as formerly he had done, and with ſome Kindneſs joyn'd.

Thus I was toſſed in my Thoughts; and in all my Troubles, I had Recourſe to God in Prayer.

By this Time, the 18th of *September*, draweth nigh, and I am inform'd, That my Lord of *Wincheſter*, the *Tueſday* before, was come

come to Town; and that beſides my Lady's Council, Sir *Julius Cæſar*, and Sir *Daniel Dun*, did, at St. *Mary Overy*'s Houſe, daily attend his Lordſhip. I expected no great Good of this; only from the King I heard nothing but well. For ſome few Days before, his Majeſty had been at *White-hall*, where I kiſs'd his Hand, and he did not only look merrily upon me, but he gave me Promiſe of the Biſhoprick of *Lincoln*, for my Brother, as I underſtood it. Some other Matters alſo paſs'd quietly in Speech, and I found no Diſturbance. But on the 17th of *Septemb.* the Day before our new meeting at *Lambeth*, my Lord of *Litchfield* being ſent from the King, bringeth divers Papers unto me, ſeal'd up. I open'd them, and found there my Reaſons firſt, ſecondly, an Anſwer to them, and, thirdly, a Letter, all written with the King's Hand unto me. I read them all preſently, without any abatement, whereunto I was help'd by my Fore-knowledge, that ſuch Things would come. I ſaid little unto it, only I ask'd my Lord of *Litchfield*, *Whether he knew what thoſe Papers contain'd?* He told me, *That the King had read unto him the Anſwers to the Reaſons, and had given him the Letter to Seal up in a Paper; but in Reverence to his Majeſty, he held it not his Duty to look into it.* Growing afterward in ſome Speech of our next Days Buſineſs, I told him plainly,

That

That having ſpent much Time in this Vacation, in peruſing the Books, I could not find any where, but eſpecially in the Anſwer of my Lord of Eſſex, *that which would give me Contentment.* I read the Places, and my Lord confeſs'd with me, *That there was not enough.* He told me alſo, *That unleſs I gave my Conſent to the Separation, that he would never give his:* So much Reverence in him did I find both then, and divers Times before, againſt this Divorcement. At laſt he mention'd one Thing which pleas'd me wondrous well, and that was, That we ſhould call for my Lord of *Eſſex* again, and new examine him, upon ſome Points to be farther declar'd, *ad informandum animum Judicis.* For hence, either we ſhould know ſo much as might perſwade us to decree a Separation, or the World might be ſatisfy'd that we had no Reaſon for it. Theſe Things thus ſettled, his Lordſhip ſeparateth. Then I withdrew my ſelf to my Study, and read over again and again, the Papers from the King. I found them very ſharp, and perceiv'd by the Time that they arriv'd unto me, that they were detain'd 'till that Day, that I might be overwhelm'd with them on the ſudden, and have no Time to deliberate, before we were to come the ſecond Time to ſit in Judgment. Theſe things did much trouble me, ſo that I did ſleep but a little that Night. I revol-

ved

ved many things, and much tumbling I had in my Mind. It griev'd me infinitely, that the King ſhould make himſelf a Party therein; That ſome Unthankfulneſs, and other Matters, were little leſs then Reproaches unto me: Methought my faithful Heart to my Maſter, deſerv'd no ſuch Sharpneſs. I devis'd how I might give the King Contentment, and it was ſome Comfort to me, that we had thought upon a Courſe of new examining my Lord of *Eſſex*. But as things ſtood, I could not force my Conſcience, which cry'd upon me, *That it was an odious Thing to GOD and Men, to give ſuch a Sentence, without better warrant.* I here caſt what might befal to the Church in my Diſgrace; how *Papiſts* would ſcorn at it; how it might be my own Ruin, and that divers ways; a Hazard to my Friends, and to the Commiſſioners which were of my Mind; how my Lord of *London*, had a Wife and Children, which might all be overthrown at one Blow. But after Midnight ſleeping, towards the Morning I conſider'd on the other Side, That my Conſcience was more unto me than all the World; that it was a fearful thing, in Place of Judgment, to give a Sentence againſt mine own Heart; That *Olivarius*, the Chancellor of *France*, upon ſuch an Occaſion, grew Mad, and dy'd in it: That the Manner of our Sentence,

tence, must be *Solum Deum præ Oculis habentes, a rei veritate inspecta*; all which, and the like Meditations, did much preponderate with me. Then I slept again, and now rising, I found my Heart much settled, to persist in that which I held to be Truth. I pour'd out earnestly my Prayers to God, and was now strongly resolv'd, to leave all to God, remembring, That he had preserv'd me from my Mother's Womb; that he had from Time to Time, rid me out of all my Troubles; that his Power was the same still; that he would never forsake me, if I turn'd not from him. I forgot not, *That the Hearts of Kings were in the Hand of the Lord*; that I had Experience of the Graciousness, both of GOD and the King, the Year before; when standing earnestly in a good Cause, that Prince *Henry* should not marry a *Papist*, I receiv'd some sharp Words from the King for my Labour; but the next Day his Majesty us'd me very kindly again. To this I added, That Poverty, Imprisonment, Death it self, were things contemptible to a resolv'd Mind: That some of my Predecessors, as Arch-Bishop *Cranmer*, and my Lord *Grindal*, had given good Examples of these Sufferings, and they were recorded in the Catalogue of the Righteous. These Thoughts thus revolv'd, I read again the Letter from the King,

King, and drawing out into a Paper, all the ſharp Words, I conſider'd them again and again, and methought they were not altogether ſo bitter as I apprehended them; that they were wrung from his Majeſty by my Lord Chamberlain's Importunity; that my Maſter had deſerv'd at my Hands, that I ſhould bear patiently twenty times more; and that all was nothing, ſo the Clearneſs of my Conſcience might be preſerv'd. With theſe Reſolutions on the *Saturday*, I came to *Lambeth*, where I met with the News of *Overbury*'s Death, and the ſound of ſome fearful Apprehenſions thereupon, bruted about the City. I made Trial of my Lord of *London*'s Conſtancy, telling him, *aut cidendum, aut cadendum.* I found him moſt reſolv'd, avowing unto me, *That if he ſhould pronounce for the Diſſolution of the Marriage, he thought the Devil would that Night fetch away his Soul.* Yea, he was earneſt on me, to perſiſt where I began, telling me, *That the Eyes of the whole Church of* England *were upon me, and expected of me, that I ſhould ſhew my ſelf a worthy Man.* At laſt we came to ſit, where my Lords of *Wincheſter* and *Worceſter*, took their Places. The Commiſſion was read, the Fact, and Manner of the Proceſs was open'd, and nothing notable done, ſaving that my Lord of *London*, propoſing, that it was fit that my Lord of

Eſſex

Eſſex ſhould be call'd to explain himſelf farther, for the fiſhing out of the Truth, all the Commiſſioners moſt willing aſſented thereunto, (yea, my Lords of *Wincheſter* and *Worceſter* expreſsly,) ſaving Sir *Julius Cæſar*, who ſoftly declar'd his Diſlike thereof, in my hearing. When the Court was riſen, I ſpake with my Lord of *Litchfield*, and not thinking fit to return any thing to the King in Writing, I pray'd him to acquaint his Majeſty how Things ſtood; and to tell him, that upon this Courſe of new calling my Lord of *Eſſex*, I hop'd in the End, we ſhould give his Majeſty Satisfaction. The *Sunday* I ſpent at *Croydon*, and preach'd on that Text of Chriſt's raiſing the Widow's Son of *Naim*, to the great Comfort of mine own Heart. That Day I conferr'd with a Friend, and ſettled ſome Courſes, if any Trouble ſhould befal unto me. I was alſo by a good Friend inform'd, that my Lord of *Eſſex*, on that *Sunday* Morning, having five or ſix Captains, and Gentlemen of Worth in his Chamber, and Speech being made of his Inability, roſe out of his Bed, and taking up his Shirt, did ſhew to them all, ſo able, and extraordinarily ſufficient Matter, that they all cry'd out Shame of his Lady, and ſaid, That if the Ladies of the Court knew as much as they knew, they would tread her to Death.

On

On the *Monday* we met at *Lambeth* again, and Information was given on the Part of my Lady. Theſe things paſs'd quietly. When the Court was riſen, my Lord of *Litchfield* told me, That he had made his Majeſty acquainted with our Propoſition on *Saturday*, but that his Majeſty was ſtrongly againſt it, my Lord of *Eſſex* ſhould any more be call'd, and that by no means he would endure it; for that peradventure, the ſaid Earl, either being provok'd by the late Challenge between him and Mr. *Henry Howard*, or otherwiſe inſtigated by the Earl of *Southampton*, might ſpeak ſomewhat which might marr the Buſineſs. This made me ſtill ſuſpect, that all was not right, and I reply'd to my Lord, *If that be deny'd us, and we have no farther Proof, I ſhall never give Sentence for the Nullity: As good declare my Mind at firſt, as at laſt, and I pray you ſo acquaint his Majeſty.* When I went Homeward, I much revolv'd this in my Heart, thinking, Good Lord! What a Caſe is this? Shall any Truth be kept from us? Are they afraid to have all out? Do they only look to attain their own Ends, and care not how our Conſciences be intangled and enſnar'd? On the *Wedneſday* we met again, and now Dr. *James* is come to us, and by and by cometh in my Lord of *Ely*, who, as it ſeem'd, had meant to have kept him away, but

but the King ſent an expreſs Meſſenger for him, requiring him by a Letter, to be there on the *Tueſday* Night. Now are we *plena Curia.* Before we ſate down, Sir *Thomas Lake* delivereth a Meſſage unto me from the King, That his Majeſty deſir'd a ſpeedy End of this Buſineſs; that it had hung long, and the World was in expectation of it; that the Term grew on, which would be full of Buſineſſes: That his Majeſty on *Monday*, was to go to *Windſor*, to meet the Queen, and my Lord *Chamberlain* with him; that therefore he would have us to fall cloſe to our Work, not to trouble our ſelves on the Morrow, to come ſee the King, who would come late to *White-Hall*, becauſe ſome Ceremonies were to be perform'd, as upon the laſt Day of Hunting; that we ſhould not attend his Majeſty 'till *Friday*, but that the Sentence muſt be given on *Saturday*. My Anſwer was publickly, *That there ſhould be no Stay in me, and that therefore on the Morrow, we would ſit Forenoon and Afternoon, if the Commiſſioners ſo pleas'd; and if they thought good, I would not refuſe to ſit until Midnight.* But in mine own Heart I perceiv'd, that all the Care was, that the Matter might be diſpatch'd before the Queen ſpake with the King, whom they ſuppos'd not to wiſh well to the Buſineſs. We go to our Court, and Sir *Thomas Lake* ſtay'd to hear the

Information

Information on my Lord's Part. It was ſtrange, to ſee how my Lord of *Wincheſter* carry'd himſelf that Day, partly to play his Prizes before Sir *Thomas Lake*, who might make Report of it to his Fame, and partly to ſhew his Ludi-magiſterial Diſpoſition. He ſnapp'd up my Lord's Council, that they could not ſpeak a Word, but he catch'd it before it was out. I know what you will ſay, when indeed he knew not, neither was it any ſuch Matter as he imagin'd. God Almighty will tell you a Tale for that; *I tell you, Doctor* Bennet, *I have as much Law as you, I am as good a Lawyer as you are.* He fell divers Times on my Lord of *London* Perſonally, and would needs know of him openly, *How many times in a Year, a Man was bound Carnally to know his Wife.* In a Word, with Scoffs, and imperious Behaviour, he play'd the Advocate all that Day, to the great Offence of the Standers by, ſo that it was publickly ſpoke of in *London*, which, I think, came to his Ears; ſo that ever afterward, he carry'd himſelf more tractable. I was forc'd to bear it, becauſe of avoiding new Complaints.

The Point moſt obſervable that Day, was, that both my Lord of *Wincheſter*, and my Lord of *Ely*, did deny Maleficiation, ſo that by no Means they would have this Queſtion to proceed in that Nature,

ture, which I openly did thank them for, and bound it upon, before all the Commiſſioners and Standers by, telling them, *That the ſame was my Opinion.* But I aſk'd my Lord of *Wincheſter*, who ſate by me, *What he then held it to be.* He told me privately, *That he held it to be a Natural Impotency, which was before the Marriage.* I aſk'd him, *What that might be, and whence he gather'd it.* He anſwer'd, *I have heard divers Particulars, which are enough to perſwade me if they be True. Tea*, my Lord ſaid I, *if they be True, I have heard as many to the contrary. I wiſh that we might examine, whether they be True or no; that were fair Proceeding. It is my Grief, that it is not permitted unto us, to try whether all theſe Matters be ſo or not. This might ſatisfy a Man's Conſcience.* So we parted that Night.

On the *Thurſday*, at Ten of the Clock, we met in *Lambeth-Hall*, where my Lady's Council took on them, to anſwer ſome Scruples objected by Dr. *Ferrand.* But Dr. *Martin*, when no Body ſpake of it, fell to wipe away that Objection, that my Lord had not ſworn, *Cum Septima manu.* Upon his Speech, the Commiſſioners took hold of it, and it then being urg'd ſtrongly, my Lady's Council ſtood at firſt, as if they had been blaſted with Lightning. Afterward they grew extream angry with Dr. *Martin*, that he had propos'd it, but the

the Iſſue was, there could no Anſwer be given unto it; but in the Sight of all the Standers by, this was broke off with Shame and Confuſion of Faces. We din'd not that Day, but about one or two of the Clock, we withdrew our ſelves privately into the Parlour. I had thought there to have had Dr. *Edwards*, and the reſt who lik'd not of the Nullity, to propound their Doubts, and ſo in Order; and laſt of all, I would have ſpoken. But there I found a contrary Courſe reſolv'd, which my Lord of *Winchester* ſeem'd much to diſlike. But my Lord of *Litchfield*, Sir *Julius Cæſar*, and Sir *Daniel Dun*, had ſet the Clock, and they muſt have their Will. The ſix Reaſons are produc'd, which Sir *John Bennet* had deliver'd the Day after we came from *Windſor*, and the Copy whereof, was by me ſent to the King. All theſe muſt in their Order be debated. One was about the unperfectneſs of the Libel, in which we all receiv'd Satisfaction, that the Libel was well to ſo much purpoſe as now they declar'd they would have it. The other five, my Lord of *London*, Sir *John Bennet*, Dr. *James*, and Dr. *Edwards*, maintain'd: I allow'd of three of them abſolutely; and the other two, that was Inſpection of my Lord's Body, and a Time to be aſſign'd by the Judge, to try whether they might Carnally know one another, I held to be fit, when

when thoſe Reaſons were propos'd; but now ſuch Flames and Quarrels were ariſen, I thought not amiſs now to be forborn My Lord of *Litchfield*, with a Pen, did note what every Man reſolv'd, but principally my Words, with a Purpoſe to ſhew them to the King, as I conceiv'd, and afterwards I found it to be ſo. I was deſirous therefore, that his Majeſty might ſee I was not Obſtinate, but ſettled to yield to Reaſon. And again, I ſuppos'd, that this Candor of mine, would make ſome of them yield to us, where they ſaw there was unevitable Truth. But I found it far otherwiſe, for our Afternoon's Work was, that they gave ſhuffling and ſhifting Anſwers to the Objections, ſuch as themſelves had ſtudy'd all the Vacation; but no Care was, whither they were True and Satisfactory, or not. And to what Sir *Daniel* propos'd, all Seven of them conſented, without ſticking or ſcruple, ſo that I might imagine it was a ſet Play. Upon the firſt Scruple debating, Sir *Julius Cæſar* finding the Difference of Opinions, and that our Lawyers ſtuck ſtrongly unto it, *Let us*, ſaith he, *put it to the Queſtion, and let the major Part of Voices determine it.* When I ſaw this to be the Proceeding, the Lord, thought I, deliver me from ſuch Judges. But yet obſerving their Manner, I poſſeſs'd my Soul in Patience. When it grew

to be dark, that the King might underſtand, that I was willing to allow Time to all that might be ſaid, I remember'd Sir *John Bennet* to read the Sentence of the *Rota Romana*, where, in the Popes own Conſiſtory, about the Year 1585, a Judgment was revers'd, which an Arch-biſhop in *Spain*, had given for a Nullity, in a Caſe being ours altogether, becauſe, after the triennial Cohabitation, he had not aſſign'd a Time for the marry'd Couple to make Trial again, and to uſe Faſting and Prayer. This Repeal was read at large, and ſo was another of the *Rota*, in the ſame Kind. But both theſe were ſlighted, as Matters of Nothing, and ſo I think had St. *Paul* been, if he had been there. I urg'd that of *Alexander* III, That even in *France* it ſelf, no Nullity had been allow'd; but that it was *Conſuetudo generalis Eccleſiæ Gallicanæ*; and that *Eccleſia Romana*, did know or practice no ſuch thing. This was ſlighted like the former ,and I perceiv'd it was but in vain to ſpeak to them, for they were reſolv'd, and be it Good, or be it Bad, the Matter ſhould be done.

On the *Friday* Morning I went to *White-Hall*, and looking ſomewhat heavily, the King cometh to me, and to my Lord Chancellor, and offereth us both his Hand to kiſs. He might perceive by my Countenance that I was not a little troubl'd, and

that was perceiv'd by divers of the Lords, who privately let me know their Minds, that we had a foul and ſtrange Matter in Hand at *Lambeth*. At laſt, the King takes me aſide, and after propounding three or four Buſineſſes, walking, he took me to the Window, and aſk'd me, *How that great Cauſe did go forward?* I told his Majeſty, *That I had no Liking of it; that I had receiv'd a Letter and Writing from him which very much troubled me, for I knew my ſelf to be his dutiful Servant, and had not deſerv'd Ill of him; that it was nothing to me whether ſhe remain'd Wife to the Earl of* Eſſex, *or were marry'd to another Man; but that I might not give Sentence where I ſaw no Proof; that I had liv'd fifty one Years, almoſt, and had my Conſcience uncorrupted in Judgment; that I knew not how ſoon I was to be call'd before God, and I was loath, againſt that Time, to give a Wound to mine own Soul; that all my Grief was, that his Majeſty's Hand was in it; that for other Men I car'd not; that I choſe rather to die an honeſt Man than a wiſe Man; that he muſt never afterward expect true Service of me, for, how could I be true to him, who was falſe unto God; that if he mark'd it well, this was no Time to diſgrace his good Servants:* I told him, *That if his Majeſty pleas'd to let the Matter alone, as he did all other Cauſes, I would make good my Part againſt all* England, *on the Peril of my Head.* The King

King anſwer'd, *That I would have no Lawyers.* I reply'd, *Yes, enough, There is not an honeſt Lawyer in* England *that would not be on my Side.* His Majeſty aſk'd me, *Whether the reſt of the Commiſſioners, Yeſterday, did not perſwade me.* I told him, *No; but their Dealing, rather drove me the contrary Way. For,* (ſaid I) *I came thither ingeniouſly to yield to any Truth that ſhould be ſhew'd me; but they, on the contrary Part, in a factious Courſe went wholly together, and what one ſaid, another ſaid, be it Well, or be it Ill, without any Scruple.* To my Speech, *That it was an Example that never had been in* England; the King ſaid, *Yes,* Berry's *Caſe.* I beſeech'd his Majeſty, *That he would not believe that Cauſe to be any ſuch Matter; for if he would pardon me, it ſhould not be long before that I would ſhew, that his Separation was for Lack of his Stones.* In this debating, the King was very deſirous to know, what ſhould be the Reaſons whereupon I ſtood, that I might have Satisfaction. My Anſwer was, *That when I was in Place of Judgment, I would not conceal the Reaſons of my Sentence, but it was to no Purpoſe to ſpeak them now; it would but put his Majeſty to a new Trouble to hear them, and then ſome Man muſt anſwer them, who look'd to his own End, and to make a plauſible Anſwer, which would not content me, without ground of Truth.* A great Part of the Time, that I had this Speech with the

King, my Eyes were full of Tears, which I ſaw, much mov'd my gracious Maſter, and eſpecially, my earneſt Deſire, *That I might do my Conſcience.* I perceiv'd the King was much overcome, by this my honeſt Dealing: And then, whilſt his Majeſty went to ſpeak with my Lord Privy-Seal, and my Lord Chamberlain, who ſtood all this while at the farther End of the Gallery; and to whom, I conceiv'd, the King told much of that which I had ſpoken; I went my ways to *Lambeth*, to Dinner. Now grew I confident to do my Conſcience right, whatſoever came of it. That Day I din'd privately, but yet, my Lord Biſhop of *Bath* was with me, whom, when I had acquainted with ſo much of the Cauſe, as I thought fit, I receiv'd no Diſcouragment from him. My Heart was much eas'd, and now I thought I ſhould no more be troubled. Yet, between three and four a Clock, after Dinner, my Lord of *Litchfield* cometh to me from the King, and bringeth a written Treatiſe upon the preſent Argument, which was the Work of a *Scotchman*, I know not who. I receiv'd it, and promis'd that Night to read it; as indeed I did, riding in my Coach to *Croydon*; for thither I thought fit to withdraw my ſelf, though it were late, for avoiding of more Perturbation. This Treatiſe no way pleas'd me, but I thought it the Work of ſome

ſome hungry Fellow, who lack'd twenty Shillings to buy Food to his Belly. Here, finding it the Day of the End of my Quarter, I ſettled much of my domeſtick Buſineſs. I forgot not to commend my ſelf, and the whole Cauſe, to God by Prayer. I meditated many Things in my Bed: In the Morning I roſe early, and before Day, in my Study, I ſet down ſome Heads, what I would ſpeak unto. Then went I early to *Lambeth*, and there ſupply'd my brief Notes, digeſting my Matter of Sentence into Order; being reſolv'd to ſpeak large, and home to the Cauſe, without Touch of any Perſon more than I muſt needs. By this Time, moſt of the Commiſſioners were come. I ſent for my Lord of *London*, Sir *John Bennet*, Dr. *James*, and Dr. *Edwards*, ſingly and ſeverally, into my Study: I requir'd them, before God, not to ſpeak any thing for reſpect to me, but to do that, which in their Learning and Conſcience they thought to be juſt, and to ſpeak that *intrepid*, without Blemiſh to any Man, but ſoundly to the Matter. I found them all avowing, that in their Souls, they found no Warrant for the Nullity. I then wiſh'd ſeverally, Dr. *James*, and Dr. *Edwards*, to deliver their Sentence, with ſome Reaſons adjoyn'd, not many, but of the ſtrongeſt. I told Sir *John Bennet*, that this Day, I expected he ſhould ſhew himſelf a

worthy Man; that he ſhould deliver his Judgment *per extenſum*; that they had labour'd to blemiſh his Skill, and to ſlight his Learning eſpecially, therefore, both for his Conſcience, and his Credit, he ſhould ſhew what was in him, to maintain an honeſt Cauſe. If Sir *Daniel Dun*, and Sir *Julius Cæſar*, who came after him, ſhould beſpatter him in their Choler, or lay any Imputation upon him, he ſhould find that ſome of us would take it off him. To my Lord of *London*, I ſaid, *We have three that ſpeak firſt, who, I truſt, will lay ſuch a Foundation in the Heart of the Hearers, as ſhall not be remov'd. But the other Side have this Advantage over us, they are ſeven of them Lawyers and Biſhops, to anſwer what our three have ſaid; and perhaps with weak Men, ſuch a Stream of ſuch Perſons may much prevail: But let not that diſmay you, my Lord, only take this Courſe; Deliver, firſt, your own Meditations; and then, having taken with your Pen, ſome of the Abſurdities, which, in the Sentence, ſome of them will deliver, blaſt thoſe, and let the Auditors ſee, that by you the Stream is turn'd. Then leave it to me, and I doubt not, in Almighty God, but to batter their Nullity to Duſt. That tho' they have it by the major part of Voices, yet, the World ſhall ſee what the Cauſe is, and they ſhall have little Comfort by it. I am very well provided; I am no way afraid; and you ſhall ſee, I will not be Tongue-ty'd.* So confi-

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dent was I in the Honesty of the Cause, and in the Helps of Almighty God, that I was not now afraid of ten thousands of People; but did long to be at the Business, as the Lord truely knoweth.

When now I was alone, revolving my Meditations, Sir *J. Cæsar* cometh into my Study, to me, telleth me, *That he wonder'd that my Lord of* Wincheſter *was not come, that it was even ten a Clock, that therefore it was fit, that the Hour ſhould be continu'd from ten to twelve.* I aſſented thereto; and by ſome of the Commiſſioners the Time was prorogu'd. Then cometh in Sir *Thomas Lake*, with a Meſſage from the King, which he muſt not deliver 'till all the Commiſſioners were come together. So he was forc'd to ſtay. Between Ten and Eleven, cometh in my Lord of *Wincheſter*; who, as afterwards found, had been all the Morning at the Court. I told him, *We had ſtay'd for him two Hours and a half.* His Lordſhip ſlightly excus'd it. Then, in the Gallery, Sir *Thomas Lake* told us, *That his Majeſty had ſent him unto us, to deliver two Things.* The one was, *That in our Sentence, we ſhould take heed of gauling of any Perſon.* My Anſwer was, *That from the Beginning of this Proceſs, we had ever been wary not to offend in that Kind; and that he ſhould be much to Blame, who, in the Concluſion, would tranſgreſs that way.* And ſo ſaid the reſt. The other was,

That we ſhould not in any long Manner, but compendiouſly, deliver what we had to ſay. I pray'd Sir *Thomas Lake* to explain that farther, whether we were only to ſay Yea or or No, and no more: For I would obey the King's Commandment.

Tu Regina jube, mihi juſſa capeſſere fas eſt.

He anſwer'd, *That he could not ſay ſo, but that we were to ſpeak briefly. Yea,* but ſaid Sir *Julius Cæſar, I know the King's Mind; for I was Yeſterday with him, and he told me, that he expected that we ſhould go no farther than Yea, or Nay, for of Reaſons there would be no End. Yea,* ſaith he, *The King told me he was promis'd ſo much. By whom,* ſaid I. *I think,* quoth he, *by your Grace. Not ſo,* ſaid I: But I ſaid, indeed, *Let every Man deliver his own Conſcience, I will not perturb the Sentence. No more indeed will I.* Then he replyeth, *I know the King expecteth we ſhould ſay no more, than I do like this Sentence, or, I do not like it. And that you know, Sir* Daniel Dun, *is the Manner of the Delegates, and not to go farther. It is ſo,* ſaith Sir *Daniel.* Upon this, the Biſhops all ſaid, *We were beſt to proceed in that Faſhion.* To which, I reply'd, *I will not be willful, but if it be agreed upon, and it be the King's Pleaſure, I will obey. But look you to it; for if any Man give a Reaſon, I am no more bound than he, but that I will return the Reaſon of my Opinion and Judgment.* They all ſaid, they would be obſervant of it.

it. Thus Sir *Thomas Lake* was diſmiſs'd. Then we call'd for the Sentences on both Sides, which the Counſel had ready. They diſlik'd that which was Abſolutory of the Earl of *Eſſex*, and we approv'd it. We found Fault with the other Sentence, Anullatory, both for the Whole, and becauſe, ſome Parts in it, in our Judgment, were apparently falſe. But they perſiſted in their Intention. So we went into the Hall, where, my ſelf, my Lord of *London*, Sir *John Bennet*, Dr. *James*, and Dr. *Edwards*, freed my Lord of *Eſſex*. The Biſhops of *Winton*, *Ely*, *Litchfield*, and *Rocheſter*, together with the two Chancellors, and Sir *Daniel Dun*, pronounc'd for the Nullity, and ſubſcrib'd the Sentence, my Lord of *Winton* pronouncing it. We perceiv'd that they were afraid we ſhould at large ſpeak our Reaſons openly, being the laſt who were to ſpeak.

The three Biſhops, of *Winton*, *Ely*, and *Litchfield*, went immediately to the Court, hoping to receive great Thanks for their Service, but they waited a full Hour, e'er they could ſpeak with the King; however they ſped afterward. And we were glad that we were freed of the Trouble. And now, I, who would not have given the Sentence for all the Gold in *India*, do expect God's Pleaſure, what will become of this Buſineſs hereafter, and ſubmit my ſelf

to God's Providence, who ever preſerveth thoſe that truſt in him.

THIS Narration is wholly written with mine own Hand, and was finiſh'd the ſecond of October, 1613, *being the eighth Day after the giving of the Sentence. And I proteſt before Almighty God, that I have not willingly written any Untruth therein; but have deliver'd all things fairly, to the beſt of my Underſtanding; helping my ſelf with ſuch Memorials and Notes, as I took from Time to Time, that if there were occaſion, I might thus at large ſet down the Truth to Poſterity, when this Caſe ſhall be rung from* Rome-Gates, *or the Fact hereafter be queſtion'd.*

GEORGE *Canterbury.*

Some Obſervable Things, ſince Sept. 25, 1613, *when the Sentence was given in the Cauſe of the Earl of* ESSEX, *continu'd unto the Day of the Marriage,* Decemb. 26, 1613.

THE Sentence being given for the Nullity, the Minds of Men in their ſeveral Places, were wonderfully diſtracted, and every one ſpake according to their Fancies. But for the moſt part there was a Deteſtation of the Thing, and a great Diſlike of thoſe that gave the Sentence, which was expreſs'd by all Courſes that Men durſt adventure upon. On the other Side, there was a ſtrange applauding and commending, of thoſe who withſtood the Separation; and from all Parts a Teſtimony came unto them, That they had done like Honeſt Men, albeit the only Scope which they aim'd at, was the Diſcharge of their Conſcience, and not vain Popular Applauſe. The Arch-biſhop the Day after the Sentence, went to the Court, to *White-Hall*, and waited on the King to Chapel,

ſtanding alſo by him in the Cloſet, where he was ſtrangely look'd on by the King, as he was alſo by ſome of the Lords; but nothing being ſaid unto him, he took no Notice of it, but bore all patiently. This Strangeneſs of the King held on at *Hampton-Court*, and elſewhere; and it came to the Arch-biſhop's Ear, that the King ſpake divers Times hardly of him, but much magnify'd them of the Affirmative Part, and eſpecially my Lord of *Winchester*, as the worthieſt Man in the Kingdom. Some things were done alſo in Recompence to divers of them; as Sir *Julius Cæſar*'s Son was made a Knight, my Lord of *Winton*'s Son alſo had the ſame Reward, which ſome merry Fellow blighted with the Name of Sir *Nullity Hilſon*; and the Biſhop of *Litchfield* muſt remove to *Lincoln*; and as for *Litchfield*, it muſt be beſtow'd on Mr. Dean of St. *Paul*'s, that ſo Doctor *Cary* might be preferr'd to the Deanery of *Paul*'s, for which it was generally ſuppos'd, he ſhould pay well. But now it run currant, that the Arch-biſhop muſt no more have to do with Naming any to Church-Livings, but ſome Lords in Court ſhould diſpoſe of all; and principally it muſt be provided, that Dr. *Abbot* muſt never be preferr'd, no, not ſo much as to *Litchfield*, ſo far was he from *Lincoln*, which was formerly promis'd unto him. Theſe things grew deteſtable to

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the People, who fear'd that even Religion would ſmart for it; but the Parties moſt malign'd, were ſilent and patient, expecting God's Leiſure, and Malice enough from ſome other Men. The firſt thing of Bitterneſs that appear'd, was a Letter from *Royſton*, under the King's Hand and Signet, directed to the Commiſſioners in the former Sentence, but brought to the Arch-Biſhop about three Weeks after the Sentence. This was a moſt ſharp Letter, complaining that they of the Negative Part, for ſo they were ſtil'd, had hinder'd the Act to be made upon the Sentence; had ſolemnly Proteſted againſt that which was done; had given unto themſelves other Titles than were in the King's Commiſſion; had glorify'd themſelves in that which was done; by which they laid an Imputation upon the King's Conſcience, who had declar'd himſelf for the Divorce, and other things of the like Nature. This Letter being read to the Commiſſioners, the Arch-biſhop ſaid, That he knew not what it meant; for he underſtood of no Man that Proteſted, nor knew nothing of any Man's arrogating of Titles to him, or glorifying himſelf: And as for the Act, he ſuppos'd it to be made up in common Form, and never heard ought to the contrary, neither meddled with any thing therein, but left it to the Regiſter, and what he had done with it, he could not tell.

tell. Furthermore, he aſk'd all the Commiſſioners particularly, if they knew what this meant, or if any of them were able to charge thoſe of the Negative, with the Points quarrelled at; who all, with one Conſent, deny'd that they could, and expreſsly averr'd, that there was no ſuch thing done at the Time of the Sentence, as had been complain'd upon. When ſtanding thus in Admiration, Sir *Daniel Dun* took upon him to underſtand the Matter, and ſaid, that if the Regiſter were call'd, it would appear there was ſomething in it. *Barker*, the Regiſter, is ſent for, and being demanded whether he had made up the Act, he ſaid that he had drawn it up in a Form that he lik'd, but ſome other of the Commiſſioners did diſlike it. And thereupon he ſhew'd two Forms, the one more large, the other more brief; but both of them having in it, that the Arch-biſhop, and the reſt of the Negative Party, proteſted againſt the Sentence. Here every Man wonder'd at him, out of what Ground he ſhould do this; and all the Commiſſioners with one Conſent, very much rebuk'd him, profeſſing, that there was no ſuch Proteſtation us'd. For the reſt of the Charge in the King's Letter, *Barker* freed all in all things, ſave only Dr. *Edwards*, who was abſent by reaſon of his ſore Eyes. The Arch-biſhop upon this, deſir'd the Commiſſioners to ſuſ-

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pend their Judgment touching Dr. *Edwards*, 'till he might anſwer for himſelf, ſaying, that Honour, Juſtice, and Charity, requir'd ſo much in his Behalf; and adding withal, that he doubted not but it would prove ſome miſtaking of the Regiſter's Part, to whom it was apparent, that ſmall Credit was to be given, ſince he had ſo groſsly ſet down of them, that they Proteſted, when all the Commiſſioners could witneſs the contrary. Moreover he deſir'd Mr. Chancellor of the Exchequer, and Sir *Daniel Dun*, to certify the Lord Chamberlain, how free and innocent from thoſe Aſperſions, the reſt were found, and that from Top to Toe, it was nothing but Miſpriſion. Before this Truth was diſcover'd, it was known that a Gentleman of the Earl of *Northampton*'s, had ſaid to Sir *John Leviſon*, and that, as from his Lordſhip, *That there was ſomething deſcry'd, which would break the Arch-biſhop's Back*; ſuch Account was made of his Buſineſs.

Thus Things paſs'd ſilently until the next Week, when upon the *Thurſday*, being High Commiſſion Day, Dr. *Edwards* being amended, repair'd to *Lambeth*. His coming was watched; and then was deliver'd to the Arch-biſhop a ſecond Letter from the King, commending the Concurrence of all to the Act, to be made up in common Form; but requiring the Commiſſioners

miſſioners to convene Dr. *Edwards* and the Regiſter before them, and to charge them with all the fore-remember'd Matters, and to learn where the Fault did lie. It was alſo commanded, that they ſhould require the ſaid Doctor and Regiſter, to ſet down in Writing what had paſs'd between them; and if it were found that Dr. *Edwards* were to blame, he ſhould be ſuſpended 'till the King's Pleaſure were farther known.

Theſe Things are fallen upon; and Dr. *Edwards* ſhew'd that the Regiſter had wronged him, and that no Part of the Accuſation was true, *in modo & forma*, appealing to the Commiſſioners, what Faith might be given to *Barker* conteſting againſt him; when it had been manifeſtly proved, that he had forged the Matter of Proteſtation againſt my Lord of *Canterbury*, my Lord of *London*, and the reſt. Time is aſſigned to them to deliver in their Writings, and accordingly, about two Days after, Dr. *Edwards* bringeth to the Arch-biſhop his Anſwer, denying the Points whereon he was accus'd. But *Barker* brought nothing till a Fortnight after; and then, by Candle-light, when the High-Commiſſion was riſen, and the Commiſſioners were departed, he delivereth a long Writing to the Arch-biſhop, who could not read it that Night; but reproved him for detaining it ſo long.

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On the Morrow, my Lord of *Canterbury* perus'd this Declaration; as as he found it to be uncertainly and diffidently ſet down for ſome other Circumſtances, ſo he diſcovered there one Thing much to be obſerved, and that was, that *Barker* delivered, That ſome few Days after the Sentence, the Lord Chamberlain ſent for him, finding Fault that the Act was not made up. And there Speech was, That ſome deſir'd to have their Titles put in, as well as the Titles of others; and for that, *Barker* named Sir *John Bennet*. Whereunto the Lord Chamberlain ſaid, *I know no Title that he hath*: *Yes*, ſaid *Barker*, *he is Judge of the Prerogative Court of* Canterbury. But *Barker* concludeth the Narration, That himſelf finding that he had named Sir *John Bennet* unjuſtly, therefore was in mind to excuſe him, and was about to ſay, that he had done him Wrong; but the Lord Chamberlain was ſo angry, that he could not bring it forth; but went his Way, leaving the Lord in that Opinion.

By this it was deſcry'd, that in the firſt Letter Sir *John Bennet* was aim'd at, as well as Dr. *Edwards*, to put ſome Diſgrace upon him, which made Men wonderouſly marvel at the vindicative Mind of ſome Men, who ſought for an Occaſion to do other Men Diſgrace. The End of the Matter was, That no Man could be touch'd; and

and therefore the Arch-biſhop, taking Sir *Julius Cæſar* with him, acquainted the King (who was now return'd from *Royſton*) with the State of the whole Matter; informing his Majeſty, that Fault fell on no Man ſave the Regiſter; and therefore, if his Highneſs were pleaſed to have him puniſh'd, it might be ſo: But for the Thing itſelf, ſince the Report was more than there was Cauſe, Mr. Chancellor of the *Exchequer* ſaid, It was better to let it die, and ſtir in it no farther. To this the King aſſented, being not willing that any Puniſhment ſhould be laid on the Regiſter; whereby it appeared, that the Intendment was, in the ſtirring of theſe Coals, to have burnt ſome greater Perſons than *Barker*, the Regiſter.

All this while it was confidently given out, That becauſe the Sentence had been oppos'd, there ſhould a Book be written in the Defence of it; and one while it ſhould be by a Divine, and that ſometimes was my Lord of *Winton*, and ſometimes my Lord of *Ely*; and it was ſaid, they were earneſtly about it: Another while, it ſhould be by a Civilian, and then Sir *Daniel Dun* muſt do it: But at other Times it muſt be by a *Scotchman*, who had written ſomewhat of that Argument before the Sentence; and other while two *Scotchmen* muſt join together about it: And to make the

the Thing the more probable, the Lord *Felton* ſent to the Arch-biſhop for the Copy of the *Scotch*-man's Writing, which was ſent unto him; and after copying of it out, it was return'd to my Lord of *Canterbury* again. This Speech of a Book continu'd about nine Weeks in all; but at laſt Dr. *Stuart*, and Dr. *Bird*, were ſent for to the Lord Chamberlain, and their Judgment was ask'd concerning that Point. Their Advice was, That it ſhould by no means be medled withal, but that Things ſhould die of themſelves: But no Queſtioning by Writing; for ſo it might go on to the World's End: For one Book might breed another; and ſo, they whom it concern'd ſhould never be in reſt. This was reſolv'd on; and afterwards there was no more Speech of Writing, ſaving only faintingly and whiſperingly, but nothing to the Purpoſe. It ſeem'd that the Commiſſioners who were for the Nullity had enough of it, and deſir'd no more to bring themſelves on the Stage, being ſo by all Men exclaim'd upon for that which they had done.

The Biſhop of *Winton*, after the Sentence, went down with great Jollity, full of Hope and Glory; but within a while after, he grew much daunted, as ſome about him, and namely his own Daughter, reported; for he heard many Ways of the

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ſtrange Deteſtation which the World had of the Deed; and the nick-naming of his Son, much affected him: But his Advertiſements from Sir *Richard Norton*, his Son-in-Law did much trouble him: For Sir *Richard* wrote divers Times from *London* to his Wife, That he could come in no Place, but his Father-in-Law was rail'd upon: That Men told him, that he thought he had a Wife, but it was no longer than my Lord of *Winton* pleas'd; for whenſoever he offended him he could make a Nullity between them. Beſides, the ſaid Sir *Richard* told Mr. *John More* of *Lincoln*'s-Inn, divers Times, *That it was ſuch a Diſgrace unto him to hear how the World talk'd of that Sentence, that although my Lord of* Winton *promiſed to give him, his Wife, and Family, their Diet and Entertainment ſo long as he lived, yet he would get him to his own Houſe, and live there, where he had Means ſufficient, and not be ſubject to that perpetual Scorn which would follow him ſo long as he remain'd in his Father-in-Law's Company.*

By theſe, and the like Paſſages, it was gueſs'd, that the reſt of the Commiſſioners, who were for the Sentence, had little Comfort in themſelves of that which they had done. On the other Part, the Arch-biſhop, and thoſe who ſtood with him, had their Honeſty and Juſtice founded out every Day more and more; and many Meſſages were brought

brought them, and divers Letters written unto them, or ſhew'd them by ſome Friends, from ſundry of the Biſhops in the Land, from the Univerſities, from many godly Preachers out of all Parts, which was an exceeding Conſolation unto them, among the many Frowns which they did bear, That there was an univerſal Concurrence of all honeſt Men to approve that which they had done. And the Arch-biſhop had privately, from many great ones in Court, and Nobles, and worthy Perſonages elſewhere, ſuch Significations of their good Acceptance which he did, that it cheer'd him much inwardly, and he was nothing diſmay'd.

Now, about the Middle of *November*, the Wheel was turn'd about: For ſince nothing could be gain'd by ſpeaking hardly of the negative Part, they thought they would make Uſe of them another Way, and that ſhould be by making the World believe, that they had now given Approbation of the Fact. And thereupon it was, in Court and *London*, aſſeverantly given out; and the Fame of it went far and near, That the Arch-biſhop, and the reſt, after more mature Deliberation, had teſtify'd their Concurrence with the reſt of the Commiſſioners, and all now were of one Mind. Men did not haſtily believe this; but yet divers of good Rank came and ſent to the Arch-biſhop

Arch-biſhop and the reſt, to know whether thoſe things were ſo or no. And when it was found to be but a Jargon, it gave a great deal of Contentment, and remov'd away much Scandal which formerly was taken. Yet again afterward it was bruted, the ſecond Time, That my Lord of *Canterbury* had given the King Satisfaction in the Matter; and my Lord of *London*, on ſuch a *Sunday*, had come and ſubmitted himſelf to my Lord Chamberlain, and the reſt had relented. Nay, it went ſo far, that in *Yelverton*, the King's Solicitor, and a great Dependent upon the Houſe of *Suffolk*, told Mr. *Pye* the Counſellor, and Mr. *Cholmeley* the Earl of *Eſſex*'s Solicitor, coming unto him about Books to be drawn up, for paſſing back the Jointure of the Lady *Frances*'s Part, and the Portion of the Earl of *Eſſex*'s Part, *That the gainſaying Commiſſioners were now conſenting, and the great Man beyond the Water was come over*; which he knew ſo aſſuredly, that *he had ſeen it ratify'd by the Subſcription of the Arch-biſhop and the reſt.* Yea, farther, he added, that *there was great Reaſon, at the firſt, wherefore my Lord of* Canterbury, *and the others, ſhould ſtand againſt the Separation; for they had juſt Cauſe, at the firſt, to fear that this Fact might be drawn into Example, and ſo Marriages ordinarily be violated; but now it was reſolv'd that no more ſuch ſhould be permitted, and thereupon they*

they aſſented. Theſe Things were inforc'd to be endur'd with Silence, for the avoiding of Clamour, and making of Trouble.

But now behold an admirable Device of the Biſhop of *Litchfield*, which ſheweth what his own Opinion was of the Validity of the Sentence. I will ſet it down as it came to be acted.

On the 26th of *November*, *Searle* the Proctor cometh to my Lord of *Canterbury* at *Lambeth*, and bringeth with him a Writ of *Certiorari* out of the Chancery, directed to the Commiſſioners in the Cauſe between the Lady *Frances* and the Earl of *Eſſex*. The Arch-biſhop was pray'd to open it, and ſo he did, and there found that four of them, *ſub ſigillis veſtris* were, required to certify *Recordum Sententiæ*, into the Chancery. The Arch biſhop aſked *Searle*, *If this were an uſual Thing?* Who anſwered, *No, he had not known any ſuch Thing before:* It is reply'd, *What then ſhould be the Reaſon thereof?* Anſwer was made, *That ſince the Matter was controverſed in the Sentence, leaſt there ſhould be Queſtion of the Marriage afterwards, the Earl of* Somerſet *would have the Sentence lying by him under the Great Seal of* England *ratify'd.* The Arch-biſhop thought that to be but a weak Hold, yet charged *Searle* to ſee ſuch an Inſtrument drawn, and a Certificate ſhould accordingly be made. On the *Wedneſday* after, *Barker*

ker, the Regiſter, cometh to *Lambeth*, and ſheweth a Form of a Draught in Paper, how the Certificate ſhould be return'd in the Names of all the Commiſſioners ſpecially put down. The Arch-biſhop, in the Reading of it, found five or ſix Lines having a black Line drawn under them; and thereupon, the more marking the Words contained in them, found that which he liked not. Thereupon he aſk'd *Barker, who lined thoſe Words? Barker* ſaid, *He himſelf did.* The other aſked, *What was the Reaſon of it?* And it was anſwer'd, *Becauſe Sir* John Bennet *and ſome other of the Doctors with him had diſliked that Sentence.* Quoth the Arch-biſhop, *And they had Reaſon for it: Who put them firſt in?* Barker ſaid, *None but himſelf.* Quoth the Arch-biſhop then, *May not the Certificate ſtand as well without thoſe Words as with them?* To which *Barker* anſwer'd, *Yes.* Then ſaid the Arch-biſhop, *Let them be ſtricken out.* Here the Regiſter, with ſomewhat ado, faintly made Anſwer, *That the Commiſſioners on the other Side would by no Means have them out.* The Arch-biſhop ſaid, *Then I perceive it is a Device to entangle us: I am ready to certify the Sentence as the Writ requireth, but I will none of this.* Barker, *I am firſt in the Commiſſion, and for my Place ſake, I would have looked, that I ſhould have been conferr'd withal, what had been fit to return, and not to have had this Trick put upon*

upon me, that either I muſt certify that which croſſeth my Judgment at the Time of giving the Sentence, or I muſt be forced not to certify at all. So *Barker* departed, and all was quiet until the *Monday* after; at which Time the Arch-biſhop was early at *White-Hall*, the Council ſitting that Morning. There, in the waiting Chamber, at the End of the Privy-Gallery, the Biſhop of *Litchfield* cometh to him, and ſaith, *My Lord, we have receiv'd a Writ of* Certiorari *out of the Chancery, to certify the Sentence for the Nullity.* *Yea*, ſaith the Arch-biſhop, *and I am ready to certify it.* *But*, ſaith the Biſhop, *He who framed the Writ, hath made it* ſub Sigillis veſtris, *and doth not know that there is a Seal of Office for the Delegates; it ſhould have been* ſub Sigillo Communi. Before the Arch-biſhop could reply, in cometh the Lord Chancellor, and to him cometh out of the next Chamber the Lord Chamberlain; and then thoſe two Lords, together with the Biſhop of *Litchfield*, drew themſelves to a Window, and there had they ſecret Communication about the altering of the Form of the Writ, as the Effect declared; for that Afternoon, a Cauſe being to be heard touching *Alimony*, from Sir *Pexal Brocas* to his Lady; and the Committees in it being the Biſhop of *Litchfield*, and Mr. Chancellor of

the Dutchy, and my Lord of *Canterbury* being Umpire; before Mr. Chancellor was come, *Pembo*, Deputy to the Clerk of the Crown, came into the Parlour at *Lambeth*, and had private Speech with the Biſhop of *Litchfield*. The Arch-biſhop going out into the Garden, *Litchfield* follow'd him, and told him, *That Mr.* Bembo *had brought another Form of a Writ*; and thereupon ſhewed him the Words *ſub communi ſigillo*. The Arch-biſhop bid him do as he thought good, and withdrew himſelf into the low Stone-Gallery, whither *Litchfield* follow'd him, and uſed theſe Words: *My Lord, here is a Form of a Certificate, which hath been thought fit to uſe in the Buſineſs of my Lord Chamberlain; and I hear your Grace taketh Exception to ſome Things in it.* Then he pull'd out the very Paper which *Barker* formerly had ſhew'd. The Arch-biſhop anſwer'd, *My Lord, have I not Reaſon to take Exception to theſe Words, that* poſt omnimodam Veritatis diſquiſitionem, poſt probationes idoneas & de jure requiſitas, *we gave ſuch a Sentence? For, to ſubſcribe this, were to proclaim my ſelf a diſhoneſt Man upon Record: For if theſe Things be true, why did I deny to join in the Sentence?* Quoth *Litchfield*, *This here is true; for it cannot be deny'd, but ſome* probationes idoneæ, & de jure requiſitæ *were uſed; and we do not ſay that all were.*

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The Arch-biſhop anſwered, *You ſhall do well, therefore, to certify* poſt probationes aliquas, *and I will joyn with you; but as it ſtandeth now indefinitely, it will be taken as if all had been uſed; I pray you therefore to alter the Certificate, and make Things plain. My Lord,* quoth *Litchfield, I will deal plainly with you; becauſe the Words were in, and doubt was made, whether they ſhould paſs or no: The King's Majeſty hath been acquainted with the Buſineſs; and he, by a Letter from Sir* Thomas Lake, *hath ſent Word expreſsly, that he will have them in.* The Arch-biſhop ſaid, *Let them then certify who will avow thoſe Words, for I cannot condeſcend unto them. And hath not that Perſon done a good Office, who hath informed the King hereof; that Diſtraction may ſtill be among the Commiſſioners, and there may never be an End of Difference.* The Biſhop ſaid, *My Lord, I could wiſh that you would yield unto the King, and ſo give him Satisfaction.* The Arch-biſhop anſwer'd, *What would you have me do? I gave the Sentence as I was perſwaded in Conſcience, and ſince that Time I have been ſilent, and meddle no way in the Matter: I did what I did upon long Deliberation; and I may not in Private, upon no Ground ſince appearing to me, croſs that which I have done in Publick.* It was farther added, *That there was Reaſon to ſuſpect, that they did ill Offices, who held thoſe Things ſtill on Foot: That there never was*

any Man, who ſought to grace himſelf by diſgracing others, but it met him at the Lane's End, at one Time or another. Theſe Things paſſed then; and after the Cauſe heard between Sir *Pexal Brocas* and his Wife, the Biſhop of *Litchfield* ſaid to the Arch-biſhop at his Parting, *My Lord, you will give us leave to certify then as we purpoſe?* To which the Arch-biſhop anſwer'd, *Yea, with all my Heart.*

The next Morning, the Arch-biſhop remember'd, that by the Carriage of Things in ſuch Faſhion as was pretended, he might be trick'd: For if the Names of all the Commiſſioners were put into the Certificate, and four of them might certify under a common Seal, it ſhould not be known hereafter, but that he and his Fellows concurr'd therein, and that, with the Words which were excepted againſt: He therefore ſent for *Barker*, and in the Preſence of Sir *John Bennet*, and two Servants, being Publick Notaries, he expoſtulated with *Barker*, as ſerving Mens Turns, rather than caring for Peace; and then punctually he deliver'd theſe Things.

Firſt, *The Writ requireth me to certify the Sentence, and I am ready to do it.*

Secondly, *If the whole Proceſs be deſir'd, I am willing to certify that alſo.*

Thirdly,

Thirdly, *For the Words in Queſtion, becauſe they were put in without my Privity, and they may as well be left out as put in, by your own Saying, I pray to be forborn for returning of them.*

Fourthly, *I require you to conceal theſe Things as much as you may, that the World take no new Alarm of any Difference between the Commiſſioners.*

The Arch-biſhop ſpake of returning the whole Proceſs, becauſe he had heard, that at the firſt, it was meant it ſhould be ſo; but Dr. *Stuart*, and, perhaps, ſome other of the Civilians, diſſuaded that by all Means; leaſt, if the whole were on Record in the Chancery, every Man that liſt, hereafter, might cenſure that Sentence, and ſift the Grounds whereon the Commiſſioners proceeded; it was good, therefore, to take away that Occaſion.

When Matters were thus reſolv'd, the Biſhop of *Litchfield*, who meant to play his Prizes in this Service, ſpeaketh to *Bembo*, to draw ſome Preface, or Concluſion, to add to the Certificate; that it might not only be ſign'd with the great Seal, as after the Form of an *Inſpeximus*; but that his Majeſty might add a Confirmation to it: And when Mr. *Bembo*, as unacquainted with this Faſhion, did not fit the Biſhop's Humour, his Lordſhip took on him to do

ſt himſelf. He drew up, therefore, a ſtrange Writing, as was inform'd by a credible Perſon that ſaw it, containing barbarous Latin, and no good Congruity of Senſe. But the Matter of it was, that his Majeſty having the Authority of the Pope now in himſelf, and in *ſcrinio pectoris*, having Power to ratify, did, *ex plenitudine poteſtatis*, confirm that Divorce to all Intents and Purpoſes. In an Evening Dr. *Martin* was ſent for to the Lord Chamberlain, and there was the Biſhop with his Papers. The Doctor, as it hath been credibly deliver'd, being ſhew'd that Writing, and his Opinion thereupon being aſk'd, did utterly diſlike it, and ſaid, *That the King claim'd nothing of the Pope's Power; but took that as his own, which the Pope had uſurped: That the King had ſpoke before by his Judges Delegate, and had nothing more to do: That if the Sentence were not good already, no Confirmation could make it good.* And when the Biſhop was earneſt in Defence of his Device, there was a little Heat ſtricken between the Doctor and him, ſo that theſe Words paſſed from the ſaid Doctor: *You do, as much as in you lyeth, ſpit in the Face of the King our Maſter, by laying on him all the Matter; whereas the Scandal that hath already been, is this, that his Majeſty is ſaid to deal ſo much in the Matter. My Lord, you are to*

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blame to enter into theſe Things without Advice of Men ſkilful in the Law: Hath Dr. Stuart *or Dr.* Bird *been acquainted herewithal?* The Biſhop ſaith, *No; but for this Matter, I know as much Law as the beſt of you all.* Dr. *Martin* reply'd, *No: Your Lordſhip thinketh, that becauſe you have read two or three Chapters of the Canon-Law about this late Buſineſs, you know as much as we do, who have ſpent all our Lives in that Profeſſion: I tell your Lordſhip, I have ſtudy'd the Law theſe two and thirty Years; and therefore, you ſhall give me leave to believe that I know more therein than you can. I am the King's Advocate, and therefore may ſuffer nothing with my Conſent to paſs diſhonourable to my Maſter.*

Upon theſe Conteſtations, the Lord Chamberlain was much troubled, ſaying, *What a Matter is this, that Men ſhould be of ſuch contrary Opinions! What ſhall we do?* When the Biſhop murmur'd much that his Conceit was not follow'd, Dr. *Martin* ſaid thus: *My Lord, in a Buſineſs of this Importance, I will not wiſh your Lordſhip to follow my ſingle Advice, but let this be done; to Morrow let Sir* William Button, *in your Lordſhip's Name, come to* Doctors-Commons; *and let him get together Sir* Daniel Dun, *Dr.* Stuart, *and Dr.* Bird, *and I will attend them; and then we will conſult jointly what is fit to be done.*

This Advice was much liked; and on the Morrow, being *Friday*, they all aſſembled, and, for two Hours, all Points were debated; but the Concluſion was, *That there ſhould be no farther Confirmation: For this was to proclaim, that the Sentence was defective in itſelf, which would make a great Buzz in the World:* And therefore, the Counſel was in general, *That too much had been done, and for the Time to come, the Care muſt be, how to lay it aſleep fairly.*

This Reſolution being taken, the next Knack was, that ſo many of the Commiſſioners as were for the Sentence, ſhould be call'd together; and they ſhould be made acquainted with this, that the Biſhop might be fairly put off. On the *Saturday* Night, therefore, in the Dark, at Sir *Julius Cæſar*'s Houſe in the *Strand*, met the Biſhops of *Ely*, *Litchfield*, *Rocheſter*, the two Chancellors of the Exchequer and Dutchy, and Sir *Daniel Dun*, and well near for an Hour, they privately debated what they thought fit, but, as it ſeemeth, reſolv'd as before, and ſo departed.

A Friend being the next Day with the Lady *Cæſar*, and knowing of the Meetting, aſked her, *What about it was?* She anſwer'd, *It is ſomething about the late Nullity; but what it is, I do not know. It ſeemeth, that they who were the Doers in it, think ſomewhat*

ſomewhat is amiſs. They ſuppoſe all is not well about it, and I, for my part, think ſo alſo.

A Man would have ſuppoſed, that all theſe Things ſhould have contented the Biſhop of *Litchfield*; but he was ſo far in Love with his own Invention, that yet he would not be beat off; and therefore, to merit the more, he once again moveth the Lord Chamberlain to ſend to Sir *Francis Bacon*, and to Mr. *Telverton*, being of the King's learned Council, to know their Opinion: Which being done; and they two, for the Reaſons above named, concurring with the Civilians: The Biſhop, as it hath been credibly related, ſaid of them, together with the reſt, *They are all Fools.* And ſo ended this Stratagem; but the Worker thereof was not yet for an End.

From the Beginning of this whole Queſtion of the Nullity, the Biſhop of *Litchfield* had carry'd himſelf variouſly, ſometimes being vehement in Words, publickly againſt the Separation, and other Times in Deed, giving Furtherance to it. Many Speeches he had privately with the Arch-Biſhop, making ſhew of much Honeſty and Reſpect to him, which the Arch-biſhop ever warily obſerv'd; thinking, notwithſtanding, that theſe had been Teſtimonies of the working of his Conſcience, conflicting in it ſelf, but not reſolv'd what to do.

In the mean Time, from the Court, from *London*, and out of the Country, the Arch-biſhop was ſtill call'd upon by divers worthy Friends, *That he ſhould take heed of that Biſhop; that he was ever, and in all Things naught: That he did all the worſt Offices that poſſibly he could, and was ſtill ſtirring the Coals, to procure to himſelf a Reputation; that he was zealous of the Houſe of* Suffolk. The Arch-biſhop forgot not thoſe many Warnings, but carry'd himſelf very warily towards him: Yet out of Charity, it ſtill came in his Mind, *He is a Biſhop, I know no Evil of him; I ought not to condemn a Man upon a Generality; I have no particular Proof of his Miſbehaviour in this behalf, although he dealt ill with the late Lord Treaſurer, and moſt falſly with the Arch-biſhop* Bancroft *in his Life-time, and after his Death; and for that Cauſe was deteſted by both of them; yet an honeſt Man may think, that Experience hath reform'd him, and now he is amended.* Yet it much affected the Arch-biſhop, that all Men ſpake ſo ill of him; and one Speech of an old Courtier, a very honeſt Knight, enter'd far with him. For about a Fortnight before the Marriage, the ſaid Courtier, ſpeaking privately with the Arch-Biſhop, among other Words, he us'd this. *I know not what the Biſhop of* Litchfield *doth among you; but he hath made a ſhift*

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to be taken for a Knave, generally with us in the Court. Now, whether the next Prank will verify ſo much or no, let the Reader judge. Eight Days before the Marriage, on a *Saturday* Morning, that Biſhop cometh to *Lambeth*, and in private Conference with the Arch biſhop, he telleth him, *That out of his Love and Reſpect to his Grace, he was come voluntarily, as of himſelf, to know his Mind about one Matter, and it was this. On St.* Stephen's *Day*, ſaith he, *the Lord Chamberlain meaneth to have this great Marriage go forward: Now it may, perhaps, be deſir'd, that a Licence ſhould be given by you, that the Banes may not be aſk'd, which if you like not to grant, I may be the Means to free you from being mov'd to it.* The Archbiſhop ſaid, *What have I to do with granting of a Licenſe; it belongeth not to me: But wherefore ſhould there be any Need of a Licenſe; the Marriage is intended to be Publick; Masks and Shews are made for the ſame; all* England *taketh Notice of it, and therefore it were good, that the Banes were openly aſk'd, as the Manner is of ſuch Marriages as are made in the King's Chapel. Yea, the Lady* Elizabeth *herſelf, had her Banes aſk'd. My Lord,* ſaith Litchfield, *there is ſome Cauſe why it ſhould be done without publiſhing the Banes: For peradventure ſome Body may ſtep up, and make a Diſturbance.*

You know what a mad, naked Fellow, came in to St. James's, *after the Death of the Prince; if ſuch a one ſhould come in now, what a Work would it make?* The Arch-biſhop wonder'd within himſelf, to hear ſuch a Reply, and thought ſurely, that it was no mad Body that they ſhould need to ſtand in fear of, but they ſuſpected ſomewhat elſe. But his Anſwer was, *My Lord, there come no ſuch into the King's Chapel; there be Doors and Officers to keep ſuch out. But if it ſhould be ſuſpected, that any would oppoſe, it is beſt the Banes be aſk'd, for then there will be ſome warning of the Gain-ſaying; whereas, otherwiſe, if at the Time of the Marriage, one ſhould ſuddenly ſtart up, it would make a greater Trouble.* Notwithſtanding the Biſhop went on, *That a Licenſe would cut off all the Doubt.* The Arch-biſhop anſwer'd, *But what have I to do with granting a Licenſe in the King's Chapel: It belongeth to the Ordinary of the Place, and that is my Lord of* Bath, *as Dean of the Chapel.* Litchfield reply'd, *He never granted any, and he hath no Seal for that Office.* It was anſwer'd, *He never granted any, becauſe no Body ever deſir'd it; but the Manner was, that the Banes were publiſh'd. But as for the Seal of the Office, who doth not know that any Seal will ſerve; and none better than his Biſhop's Seal, it being ſaid,* Datum ſub ſigillo noſtro Epiſcopali

Epiſcopali, quo in hoc caſu; *or* hoc Tempore utimur. *King* James *at the firſt, did uſe the Seal of Queen* Elizabeth, *'till a new one was made.* The Biſhop proceedeth, *Yet it would be fit that you granted the Licenſe, if it be requeſted.* To this the Arch-biſhop ſaid, *I ſhall do that which never any of my Predeceſſors did. Yes,* quoth Litchfield, *If you would ſeek your Records, you ſhould find ſome ſo granted.* The Arch biſhop anſwer'd, *I have enquir'd of my Officers, and they tell me, That no ſuch thing was heard of, in* Omni Hominum Memoria. *But* my Lord, *I know that my Lord of* Bath *hath it under the Great Seal of* England *excluſively, to the Arch-biſhop; ſo that in direct Words there is a Reſtraint, that he may not meddle there. Yea, but,* quoth Litchfield, *you have an Act of Parliament, enabling you to grant Diſpenſations to the King and his Children; and therefore it belongeth to you.* Said the Arch-biſhop, *Do not you think that I underſtand the Act of Parliament as well as you?* My Lord, *Do you think that that Statute was made for theſe ordinary Graces and Diſpenſations? Why, is not your Lordſhip able, within your Dioceſs, to grant a Licenſe, that a Marriage may be ſolemniz'd, and not the Banes aſk'd? Yes,* ſaith he, *I may: Nay, every Arch-deacon may do it within his Juriſdiction. Then my Lord,* quoth the Arch-biſhop, *muſt*

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an Act of Parliament be made to grant the Arch-biſhop Power to do that which every Arch-deacon may do within his Precinct? There is ſurely ſome other Matter in it. But I marvel, my Lord, that you are now ſo earneſt for the Arch-biſhop's Licenſes, when, as I have heard, in the Days of my Predeceſſor, when you were Biſhop of Rocheſter, *you would not ſuffer the Arch-biſhop's Licenſes to paſs within your Dioceſs: No,* ſaith he, *it was for* Weſtminſter *that I did ſtrive, not for the Dioceſs of* Rocheſter. *And it is true, that there be Records in that Church, that the Monks did contend with the King about divers Queſtions. I had Reaſon therefore, to ſtand for the Privileges of my Church.* It was anſwer'd, *So hath my Lord of* Bath *to ſtand for the Rights of the King's Chapel.* The Arch-biſhop ſeeing how earneſt the Man was, in ſo unreaſonable a Thing, ſaid farther, *My Lord,* you have mine Anſwer, but let me now tell you one thing. *It is ſix Weeks agone, that I heard from the Court, and many Times ſince I have had it reiterated, that ſuch a Trick ſhould be put upon me: That although it needed not, yet I ſhould be mov'd for granting this Licenſe, becauſe thereby I ſhould be conſtrain'd, either to grant it, and ſo croſs my former Sentence, and involvedly give my Conſent to the Nullity, or I ſhould deny it, and ſo grate once again upon*

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on the King's Diſpleaſure. You ſee now I have given you a fair Anſwer, which may free me from both. But, my Lord, I pray God you do good Offices in this Buſineſs. I fear you put your ſelf into many Things, which may be better forborn. But let me tell you, there was never any Man, who ſought to raiſe himſelf by wronging another, but at one Time or other he had enough of it. It is now almoſt three Months ſince this Sentence is given, and ſince that Time, I have not meddled with the Matter, for offending the King. I am ſilent, and no way oppoſe, and Men have their End; yet cannot I be quiet. I would have you know, that God beholdeth theſe things, and remembereth them. And for my Part, I am not blind, I ſee well what is done; and I ſhall not always be ſilent. The Time will come, that I muſt ſpeak; and it ſhall appear I am not Tongue-ty'd. This made the Biſhop not ſo forward as before, but Occaſion of a farther Speech being offer'd; the Arch-biſhop went on, and ſaid, *The Sentence which I gave, was in the Fear of God, and according to my Conſcience: And if that had been done, which was convenient, and we called for, there needed not to have been any Diviſion in Judgment. For, my Lord, you may remember when you came to me at* Croydon, *and brought theſe Papers from the King, after the reading whereof, I ſlept little that Night, how*

how deſirous I was to give his Majeſty Satisfaction; and therefore pray'd you, fetching out the Proceſs unto you, to tell me whereupon I ſhould ground my Sentence. You ſhew'd me one Article, that he had not known her, nor he thought that he never ſhould. *I told you then, Yea, that was for want of Love, for he ſaid,* When I came out of *France,* I lov'd her; I do not ſo, neither ever ſhall I. *It is want of Love.* To this the Biſhop ſaid, *Yea, and the Earl added,* That he had done his Beſt oftentimes, Carnally to know her, but he found an Imperfection in himſelf. The Arch-biſhop reply'd to this, *Oh, my Lord! Never ſay ſo; for his Lordſhip's Anſwers upon his Oath, are to the contrary:* He found no Defect or Impediment in himſelf. *And if I ſhall ſpeak my private Opinion, although I would not have you believe it, I think the Earl as able a Man for a Woman, as any is in* England. *And I think to the contrary,* Quoth Litchfield. The Arch-biſhop went on: *But, my Lord, when your Lordſhip and I had theſe Difficulties in our Mind at* Croydon, *you told me of one thing which I embrac'd as an Oracle from Heaven. And that was, that to rid our ſelves of theſe Diſtractions, we had no other Way, but to call the Earl of* Eſſex *again upon his Oath, that ſo giving us a fuller Anſwer, we might either have good Ground to pronounce for the Nullity, or*

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Matter to give Reaſon why we might not condeſcend unto it. I approv'd this, and you know how the next Day, in publick Court, it was mov'd, and my Lords of Wincheſter, Ely, Rocheſter, *and your ſelf, gave very good liking to it; and no Man ſaid any thing againſt it, except Mr. Chancellor of the Exchequer, who ſoftly ſpake,* I know not whether that will be permitted. *But you may remember, you were intreated to deliver this to the King at* Theobalds, *from whom you brought Word,* That it ſhould not be granted, becauſe the Earl of *Eſſex,* being partly provok'd by his falling out with Mr. *Henry Howard,* and partly being counſelled by the Earl of *Southamptou,* would ſpeak all things to hinder the Nullity. My Anſwer then was, *That he was to ſpeak upon his Oath, and we would moſt ſtrictly examine him.* When that was deny'd, which ſhould have led us to the Truth, I muſt confeſs I had never any mind to pronounce for the Separation. The Biſhop ſeem'd to take no great Pleaſure to hear theſe things thus repeated, but fared, as if he could have wiſh'd, that they all had been forgotten. The Concluſion of all was, that the Biſhop ſeem'd to be well ſatisfy'd, that no Licenſe was given, and promis'd the Arch-biſhop, to take Care that he ſhould no farther be troubled with it, aſſuring him, *That he did*

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ever good Offices to him, whereof the King could give Witneſs, and would; and he would ever make the beſt of things. To which the Arch-biſhop ſaid, *If he did, he would take it for a Kindneſs at his Hands,* and ſo he departed.

Accordingly, the next Day the Banes were aſk'd in the Chapel, and there was nothing but fair Weather, the Arch-biſhop attending the King in the Cloſet. On the *Monday* the King went to *Hampton*-Court; and that Day the Biſhop of *Bath* and *Wells* came to *Lambeth:* He told the Arch-biſhop, that he had a direct Meſſage unto him from the King, and that was, That his Majeſty did much marvel, that he ſpake not with him about the Sentence: That the King expected Satisfaction and Submiſſion. His Lordſhip added, That he perceiv'd that the King had ſome Scruple in his Mind, which he wiſh'd ſhould be remov'd before his going to the Communion on *Chriſtmas* Day. The Arch-biſhop knew not that the Biſhop of *Litchfield* had dealt any Way treacherouſly with him, and therefore was conſtrain'd to anſwer, in general, that he knew not what to ſay to his Highneſs. He perſuaded himſelf, that in giving of the Sentence he had done his Duty, and therefore could not tell how to make a Submiſſion where he conceiv'd no Fault.

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If in any Circumſtance he had err'd, he was ready to teſtify his Sorrow for it; but he knew no ſuch Thing; yet, if his Majeſty was diſpleas'd at him, to ſignify his Obedience to his King and Sovereign, to whom he was ſo much bound, he would not refuſe, if the King were pleas'd to reſtrain him of his Liberty, and lay him in the Tower all the Days of his Life, to ſubmit himſelf unto it patiently, without Murmuring.

Furthermore, he pray'd the Biſhop of *Bath*, and (who, on the Morrow, was to go to *Hampton* Court) to ſignify, humbly to his Majeſty, That he had nothing in this World more precious than his Life; and that he wiſh'd, that he had given that Life as a Redemption, that the King's Hand had never been in that Buſineſs. And withal, he ſaid, that at the coming of the King, he would attend his Majeſty.

On *Wedneſday* Night, the King came to *White-Hall*; and on the *Thurſday*, after Dinner, my Lord of *Canterbury* went to the Court, where they were all buſy about Plate and Jewels againſt the Marriage. Notwithſtanding, he had haſtily Speech of divers Matters with the King; and in the End, he ſaid privately unto his Highneſs, *May it pleaſe your Majeſty, I underſtand*, by

by my Lord of Bath and Wells, *That your Majeſty expects that I ſhould give you an Account about the Matter of the Lord of* Eſſex, *and the Lady* Frances: *I can ſay nothing more than this, That I was put into the Commiſſion as a Judge, and at the Time of Sentence, I did my Conſcience; and ſince I have not meddled with the Matter. Yes,* ſaith the King, *I hear you deny'd a Licenſe to be granted, for not aſking of the Banes; which I wonder you would do, ſince the Sentence was paſs'd. No,* ſaid the Arch-biſhop, *I deny'd no Licenſe; but I adviſ'd, that the beſt Courſe was, that the Banes ſhould be aſk'd according to the Cuſtom us'd in the Chapel.*

Secondly, I ſaid, *That if any Licenſe ſhould be granted, it belong'd not to me to give it, but to the Ordinary of the Place, the Dean of the Chapel, who hath it under your Majeſty's Great Seal, excluſive to the Arch-biſhoprick. Yea,* ſaid the King, *My Lord of* Bath *ſaid ſo; but I am told it is otherwiſe.* The Arch-biſhop reply'd, *Nay, it is ſo indeed.*

And thirdly, ſaid he, *My Anſwer was, That never any of my Predeceſſors granted Licenſe for any Thing done in the King's Chapel: I have receiv'd Information ſo, from my Officers. It had then been Preſumption in me, to attempt that which belong'd not unto me. This is another Matter,*

ther Matter, ſaith the King, *Were theſe your Anſwers? I was told otherwiſe. But I will take ſome other Time to ſpeak with you.* The Arch-biſhop, after this, attended half an Hour, and nothing being ſaid, he departed.

The ſame Night, a Friend coming to *Lambeth*, told my Lord, *That he had been that Day with the Lord* Knowles, *where he found, that the Biſhop of* Litchfield *had exceedingly wrong'd my Lord of* Canterbury: *For he had reported all the Speech about the Licenſe, in a ſpiteful Manner, ſaid, it was abſolutely deny'd: That the Arch-biſhop gave out,* That the Earl of *Eſſex* was very Potent for a Woman; and that he intended to queſtion this new Marriage, at one Time or other, that it ſhould never take effect.

This ſaid, the Gentleman made a great Stir among them; and the Arch-biſhop was much blamed, that he would never make an End: But they were much troubled at it, as fearing themſelves, that all was not ſure. *But*, quoth he, *when I had told them, that this was ſome ill Office of the Biſhop of* Litchfield, *who had every Day new Inventions to puzzle them, that he might ſo much the more indear himſelf unto them, by ſignifying his Zeal for them; and that I knew how fairly my Lord of* Canterbury *had anſwer'd him*, (for ſo indeed he did) *and that he was*

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ſo far from diſturbing the Marriage, that he intended to be preſent at it; they were not only appeaſed, but ſeem'd much content, that his Grace would be there: And this I aſſure you to be true.

When the Arch-biſhop heard this, he was now ſatisfy'd, that the Man who had done him all the Wrong, was the Biſhop of *Litchfield*; from whom he reſolv'd afterward to be very wary how he truſted him. Yet, profeſſing that he forgave him with all his Heart, on the *Chriſtmas-Day* he attended the King, and receiv'd the Communion with his Majeſty; and ſo, coming Home to Dinner, Sir *Charles Cornwallis* came along with him. This Gentleman is one, to whom, for his Love, the Arch-biſhop was much beholden; and after Dinner they grew privately into Speech of all theſe fore-remember'd Stirs; where the Knight found much Fault that ſo many Tricks were put upon the Arch-biſhop; blam'd infinitely the Biſhop of *Litchfield*; promiſed to acquaint ſome of his great Friends with his Qualities, and aſſured to make Things be rightly underſtood; and took away with him that Report, wherein he ſeemed much to joy, that the Arch-biſhop would be at the Marriage.

On the Morrow, being St. *Steven*'s Day, the Arch-biſhop went to the Court, attended

ded the King to Chapel, went down to the Marriage, (where, not the King, but the Lord-Chamberlain, gave the Bride) had a Pair of Wedding-Gloves, and ſo came Home to Dinner, where he ſate with much Comfort, as being glad, that ſince Things muſt be ſo, they were come to an End: And ſo pray'd God to bleſs his Church, the King, and Kingdom, and himſelf; that he might be free from ſo many Vexations, as for a long Space undeſervedly had follow'd him.

THE

The SPEECH intended to be ſpoken at *Lambeth*, *September* 25, 1613. by the Archbiſhop of *Canterbury*, when it came to his Turn, to declare his Mind concerning the Nullity of Marriage between the Earl of *Eſſex*, and the Lady *Frances Howard*.

[*Seven of the Commiſſioners having before declared themſelves that they would Sentence for a Nullity, and great Reaſon being to think, that the Biſhop of* London, *Sir* John Bennet, *Dr.* James, *and Dr.* Edwards *would give Voices againſt the Nullity.*]

MY Lords, and you the reſt of the Commiſſioners, I have had a great Contention and Deliberation within my ſelf, in what manner I ſhould utter my Judgment in this preſent Cauſe,

since, after the Speech of those Three who first began, so great a Stream and Concurrence together of the rest, (my Lord excepted, who spoke last) have given their Opinions for the annulling of the Marriage. But yet I hold not my self concluded thereby, but that I may declare my Judgment, having learned that *Suffragia* among Wisemen are as well *appendenda* and *ponderanda*, as *numeranda:* And it was no shame for *Phocion* in *Athens*, upon good Ground, to contradict the whole City; neither was *Paphnusius*, in the Council of *Nice* the less respected, when he stood against the whole Synod; nay, it was his Honour, that by delivering of his Sentence, he altered the Resolution which that whole Assembly had intended to take, which I freely acknowledge I have no hope to affect at this Time. And yet, though I have not that hope, but might very well spare this labour, yet my Conscience telleth me, that it becometh me to speak in a Matter of this importance, because, not only, *Deum timeo*, I fear God, which I doubt not but all of this Company doth; but I am afraid of God, least he should be angry with me if in this Case I be silent. And I think it is expected of me, since I am here present, that I should not sit as an Idol, and only fill a room; for that were to lay an Imputation on my self, that I had undertaken a Cause, which in publick I durst not offer to maintain. I

I muſt acknowledge, that in delivering of my Mind in this Buſineſs of ſo great Weight, I do find two defects, that I cannot ſo pertinently ſpeak unto the Purpoſe as divers of the Judges here: The one is, That I am no Lawyer; and the other is, That I am no married Man; by both which I am diſabled, that I cannot ſpeak with that Confidence concerning ſome Particulars, as moſt of you, the Commiſſioners, are able to do; but in lieu thereof, I have endeavoured to furniſh my ſelf ſome other way concurrent to this Purpoſe. As by reading, by conferring with ſome whom I do truſt, with pondering thereupon, ſo that it hath loſt me much ſleep at ſeveral Times, with frequent Prayer unto God, that he would direct me aright; which I have more begged of God in this Cauſe, than ever in any that was before me in Judgment. And beſides, I bring with me *animum candidum*, a Mind devoid of Paſſion, or any Perturbation, which inclineth to no part for fear, or for favour, for ſpleen or for hatred: From which, I thank God, in pronouncing of Sentence, I ever have been free, remembring that Judges are in the Place of God; and as *Jehoſophat* ſaid, 2 *Chron.* 29. *Non hominis judicia exercetis ſed Domini, & quicquid judicaveritis in vos redundabit.* He then who ſitteth in the Place of God, and in pronouncing of Sentence will vary from

Juſtice, he leaveth God, and ſheweth himſelf worthy to lye in the flames of Hell, for abuſing of the Truſt which is committed unto him, which I hope I ſhall not do. And *cui boni?* to what end ſhould I tranſgreſs in Judgment for either ſide, when I have no reaſon to be partial for either, ſince it is indifferent to me in any particular, whether this Queſtion receive one or other determination.

Where leaſt I ſhould be miſtaken, I think it not amiſs, as publickly I have done divers Times before, to let the World know what my Judgment is concerning the Impotency of a Husband towards his Wife. That ſince Marriage in young Couples is for carnal Copulation and Procreation thereupon, and that it is the intendment of thoſe which contract Matrimony to receive Satisfaction in that Kind, that if this Nobleman be not able to perform thoſe marital Rights unto his Lady, he doth unto her a very great Injuſtice to retain her as his Wife; and we ſhall perform a great part of Injury and Cruelty towards her, if we do not free her from this Burthen and Yoke. We are bound in Conſcience to do it, ſince it is in truth no Marriage, but a pretended Matrimony, that Conſummation being wanting which was one of the firſt Things in Intention when they two came together: For *impoſſibilitas officii*, by a received Maxim,

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ſolvit vinculum Conjugij. But the Point is, that before this Separation be pronounced, it muſt appear unto the Church, that there is good Cauſe for the ſame; which muſt not be upon light Surmiſes, or queſtionable Suggeſtions, but upon evident Declarations and Proofs, which may give full Contentment to the Conſcience of the Judge. The Marriage was overt and in the Face of the Church, whereby they were joyned into one; let the Reaſon of Separation be as clear as that was, if it poſſibly may be; or let it be ſo apparent, that the Church may well know, that there is ground to ſtand upon for pronouncing of a Nullity. Now this is it which I doubt will not fall out in this Caſe of my Lord of *Eſſex*; there is not proof ſufficient to inform the Minds of the Judges that this knot ſhould be diſſolved, and themſelves ſet at liberty, the one from the other. And then you underſtand what the general Rule is, *Quod dubitas ne feceris.* And in this Controverſy there ſeems in my Judgment many Reaſons of doubting, that the Separation deſired ought not to be granted. You ſhall hear ſome few of them.

1. The firſt Scruple which ariſeth in my Mind, is from the uncertainty of that Proceeding, which we have had in this Buſineſs. For in the handling of it formerly, we had it propounded, that there muſt be

a Nullity *propter maleficium verſus hanc.* That was it which we debated, and for the which we turned our Books; that the Counſel for my Lady did ſtill inſiſt upon, not naming the Words indeed, but by a Periphraſis, or Circumlocution, deſcribing the ſame. And it cannot be forgotten, how Dr. *Stuard*, being told by one, or more of the Commiſſioners ſitting then in Court, that his whole Speech did ſtill point out *maleficium*, he anſwered, it is true, that is it which we intend. The Authorities always brought out of the Canoniſts were in direct Terms upon *maleficium*, the Proofs intended nothing elſe. And we all underſtand, that to have an Impotency unto a Man's own Wife, and an Ability unto other, and that incurably, and that for ſome Latent Reaſon, which cannot be known, is the Caſe of *maleficium*; and that is the matter alledged in the Libel, and whereupon my Lord is examined. And yet, now ſince we ſit upon the ſecond Commiſſion, *maleficium* is diſclaimed. One of my Lords hath avowed it, that he diſlikes that *maleficium*; that he hath read *Del-Rio*, the Jeſuit, writing upon that Argument, and doth hold him an idle and fabulous Fellow; that he rather ſuppoſeth it to be God's own handy Work, than any Thing from the Devil. Another of my

My Lord of *Wincheſter.*

my Lords hath aſſented thereunto, and *maleficium* muſt be gone. Now I for my part will not abſolutely deny, that Witches by God's Permiſſion may have a Power over Men, to hurt all, or part in them, as by God they ſhall be limitted; but how ſhall it appear that this is ſuch a Thing in the Perſon of a Man? The Queſtion is, *An factum ſit*, and how it ſhall be diſcovered. But to make it a Thing ordinary, as the *Romiſh* Writers do beyond the Seas, I take it to be a Fable, acknowledging that for Truth, which a Biſhop well verſed in that Argument did lately write, that Maleficiation is the very garbage of Popery; a Thing ſo baſe, that we who have learned Chriſt aright, ſhould deſpiſe and contemn, allowing it no place amongſt us. Which Courſe it were a ſhame if we ſhould not obſerve, ſince the Papiſts themſelves grow very weary of it; and that even in *France*, where there hath been more ado with this Maleficiation than in any other Country; for there the common Sort at the Time of their Marriages, were wont to be afraid to have the Words of Conjunction in Matrimony to be ſpoken aloud, *Quos Deus conjunxit nemo ſeparet*, or the Benediction to be publickly given, leſt ſome Witch or Sorcerer in the ſame Inſtant ſhould tye a knot upon a Point, or play

My Lord of *Ely*.

ſome other ſorcering Trick, whereby the new Bridegroom ſo long as that knot laſted, ſhould be diſabled from actual Copulation with her whom he had married. And for avoiding of that hazard, they had therefore their Matrimonies celebrated in the Night Time, and in ſome private Place, where none came but ſuch Friends as they dared to truſt. This Superſtition grew ſo common, and Men were ſo abuſed by the fright that came thereof, that the Prelates of *France*, about Thirty Years ſince, in a Council at *Rheimes*, made this Decree againſt it. *Peccare graviter admonemus eos, qui noctu vel clanculum benedictionem nuptialem ſibi dari procurant propter metum maleficij: Maleficium enim ſe vitare poſſe, credere debent, ſi eo pietatis affectu ad conjugium accedant, qui præſcribitur in ſacris literis, videlicet ut cum timore Domini, & amore filiorum, magis quam libidine impulſi copulentur, devotè ſuſceptis pœnitentiæ & Euchariſtiæ Sacramentis.* And the Year after that, another Council in that Kingdom doth ſpeak yet more plainly. *Et quia Chriſtiano nomine indignus error noſtro ſeculo inolevit, ut ſignationibus, conſignationibus, vinculis & nexibus Matrimonia impediantur: Hac Synodus communione*

Bochellus in Decret. Eccleſ. Gallic. *lib.* 3. *tit.* 5. *cap.* 176. *Anno* 1583.

Idem, lib. 1. *tit.* 14. *cap.* 7. ex Concilio Bituricenſi, *Anno* 1584.

munione Eccleſiæ interdicit omnes eos, qui hujuſmodi ſuperſtitionibus utuntur: monetque fideles, ne hujuſmodi commentis fidem habeant, ſed in Deo fiduciam certam conſtituant, nec id circò matrimonia noctu fiant, ſed in luce & frequentia hominum. If it be rotten ripe in *France*; if it be Error *indignus Chriſtiano nomine*; if Men muſt not *fidem habere hujuſmodi commentis*; what do we with it here in *England*? let it be caſt away as a rotten Rag of Popery. And yet I do now find, that in the very Sentence which is this Day to be given, it falleth directly upon the Deſcription of *maleficium verſus hanc*. So that what ſhould I think of this Caſe of my Lords, which is built on ſuch a Foundation as no Man will ſtand to? We are on it, and off it, and avow it we dare not, yet fly from it we will not. This moveth Scruple in me, how I ſhould aſſent to that whereof I can learn no certainty from the Council of my Lady, nor from you that be the Judges, who ſpeak for this Nullity: I dare not reſt my Building on ſuch a ſandy Foundation.

2. Another Matter which troubleth my Mind, is the Novelty of that which is now ſet on Foot; a Thing unheard of in our Church, and unknown in our Kingdom. We have many Stories, Old and New, of Things done in this Land; we have Regiſters extant in every Dioceſe; we have Acts and Records which ſpecify thoſe Accidents

which have fallen out in the Days of our Fore-fathers. I have cauſed ſearch in many Places to be made, and ſo I know have ſome of you, the Commiſſioners; and I have called upon you for the ſame, but I can have no Precedent of any ſuch Example that hath paſſed in our Kingdom. No Memory of Man can expreſs unto me the Name of that Perſon, whoſe Marriage was annull'd for Impotency towards his Wife, when he found an Ability of carnal Copulation with any other Woman. It is this Year, 1613. that hath ſet Abroad this preſent Imagination, for the former Ages knew it not. It is ſafe walking in the Ways which are treaded out unto us. We have great Reaſon for our doings in theſe Human Actions, when we do thoſe Deeds which formerly were done by our Predeceſſors. I have had many worthy Men, which have gone before me in the Place which I now hold, Men learned, Men judicious, great diſcoverers of Impoſtures; Men that have done great Services for the Nation where we live; but of them never any had ſuch a Caſe before them, they never gave Sentence for a Nullity of Marriage upon ſuch an inability. I know not whether it be a happineſs or unhappineſs, that I muſt be the firſt to ſit in a Commiſſion for determining ſuch a Controverſy.

I know to meet with this Objection, it is whiſpered ſometimes, that there is an Example, and that is *Bury*'s Caſe, which is urged as a Precedent unto this now in Queſtion. But indeed, that is no Pattern of this, the diſſimilitude is great between the one Caſe and the other, for *Bury* had his Stones ſtricken off with an Horſe, that nothing but a little part of one of them remained. I will read you the very Caſe, which if any Man doubt of, ſhall be avowed unto him. Thus then it doth follow.

John Bury, Eſquire, was lawfully ſeiſed in his Demeanes as of Fee, of, and in divers Mannors, Lands and Tenements, within the County of *Devon*. The ſaid *John Bury*, did the 20th Day of *November*, in the firſt Year of Queen *Mary*, marry one *Willimot Gifford*, and they lived together Three Years; and the ſaid *Bury* could not *carnaliter cognoſcere dictam Willimotam.*

Afterwards, *viz.* the 17th of *May* 1561, the ſaid *Willimot* called the ſaid *Bury* before the Eccleſiaſtical Judge, and charged him to be *impotentem ad coeundum cum dicta* Willimota, *propter vitium perpetuum, & incurabile impedimentum ad generationem, & ejus inhabilitatem*, &c. and thereupon deſired to be divorced. In the Proceeding before the Judge, it was proved by divers Witneſſes, of which two were Phyſicians, that the ſaid *Bury* had but one little Stone, and that

that no bigger than a Bean. It was alſo depoſed by divers Matrons, that the ſaid *Willimot Gifford* remained a Virgin, and incorrupt; and the ſaid *Bury* confeſſed no leſs: Upon which Proof, and Confeſſion of *John Bury*, the Eccleſiaſtical Judge pronounced Sentence of Divorce, and did thereby ſeparate them.

Afterward the ſaid *John Bury* took to Wife one *Philip Monjoy*, his firſt Wife, *Willimot Gifford*, being then alive; and the ſaid *Philip* had a Son in the Time of their continuing together, *John Bury*'s firſt Wife being alive.

Afterwards, the ſaid *Willimot* being ſtill living, the ſaid *Monjoy*, of her own accord, without any Sentence of Divorce, forſook the ſaid *John Bury*, and married one *Langeden*, with whom ſhe continued. The ſaid *John Bury*, and his firſt Wife *Willimot* died, the ſaid *Monjoy* and *Langeden* then living, married together.

The Queſtion is, Whether *John Bury*, being divorced from *Willimot Gifford* for Impotency, the ſecond Marriage, ſolemnized between the ſaid *John Bury*, and *Monjoy*, during which Time the Iſſue Male was born, be in Law a Marriage or not.

It appeareth by the Proceſs made in the Cauſe, and the Words of the Sentence grounded upon the ſame Proceſs, that the firſt Marriage was pronounced to be void,

prop-

propter defectum & vitium teſticulorum, which made the ſaid *John Bury*, *impotentem & ineptum ad actum generandi, & coitum conjugalem.* And ſo in all Reſpects, this ſecond Marriage with *Monjoy* is void, and of no effect: For either this Cauſe of the Diſſolution of the firſt Matrimony is true, which is always to be preſumed, until the contrary do appear, and then the ſame Cauſe doth make the ſecond Marriage void alſo; or elſe, if it any ways appear, this Cauſe of the Diſſolution of the firſt Marriage to be falſe; *Et Eccleſia erat decepta, quia ſatis potens ad generandum, & quod in ipſa generavit.* And in that Caſe the firſt Marriage is good, in Law, *& debet redire ad priora connubia:* And ſo the ſecond Marriage is utterly void.

We are of the Opinion above laid down.

John Loyde, *Edward Crompton,*
Henry Jones, *Robert Fourth,*
John Hone, *William Farrand.*
Nicolas Stuard,

Whether this be true or no, I appeal to Dr. *Stuard*, who is here in Preſence, and of Counſel for my Lady, who, I know, will affirm it, becauſe, not long ſince, being asked by me of it, he confeſſed the ſame. And here is Dr. *Farrand* now of Coun-

Counſel for my Lord, who was uſed— for his Advice in this Caſe of *Bury*; and Dr. *Hone* is yet living, who can teſtify the ſame. For I will ſuppoſe, that a Man cannot forget ſuch a famous Caſe as that was, wherein himſelf was employ'd; but if all theſe were dead, I know where Records, be, which ſtill will continue. If this then were the Matter in Queſtion touching *Bury*, *defectus teſticulorum*, what is this to the great Controverſy now depending before us? And if this be the only Precedent, that ſhould be the Inducement, that the Sentence to be given in this Cauſe is not new, but the like hath been heard of before; I am where I was: We are now to act a Novelty, a thing ſtrange, and unheard of in this Church of *England*, whereof let other Men be the Managers, I may have no hand in it.

But perhaps it will be ſaid, that in ſome other Countries, and eſpecially in *France*, theſe things are well known, and the Examples of one Kingdom, eſpecially being ſo near unto us, may be an Inducement for us to do the like, ſince the Reaſon is the ſame. My Anſwer thereunto is, That I that live in *England*, am to frame my ſelf to thoſe things, which I find in the Church of *England*, whereof I ſee no reaſon, but there ſhould be as great Eſteem, as of any Church in the World. In the Days of our Fore-

Fore-fathers, as our Nation was held a very noble Nation, ſo was the Church of *England* held a very famous Church. *Eccleſia Anglicana*, as might eaſily be ſhewed out of *Matthew Paris*, and by divers things in ſome later general Councils, did carry a greater Sway. And why ſhould we at this time, in any thing, yield unto any Church in the World, ſince it is a thing well known, that the Knowledge of Divinity doth abound here, beyond all other Nations? and Men of this Land have beat down the Power of the Pope, and made evident divers Queſtions in Matters of Theology, beyond all the Parts of Chriſtendom! But beyond this, I do know, that the Cuſtoms of Churches, even by the Determination of the Pope himſelf, ought to be the Rule of Judgment in this Nature. We have a famous Place interſerted into the Body of the Law, written by Pope *Alexander* the 3d. unto the Biſhop of *Amiens* in *France*. It is worth your hearing; *Quod ſedem Apoſtolicam conſuluiſti ſuper his, quæ tibi dubia exiſtunt, gratum gerimus & acceptum, & tua exinde fraternitas non parum commendanda videtur. Ex tua ſiquidem parte nobis eſt intimatum, quod quædam mulier, tui Epiſcopatus cuidam viro nupſerit, aſſerens quod os utriuſq; inguinis rupturam, genitalia ejus*

De frigidis & maleficiatis, cap. 2. in Supplemento.

ejus abscissa fuissent, nec dum ab eo cognito fuisset, qui utiq; factus leprosus, se pariter & sua domui reddidit infirmorum. Mulier vero ad domum patris reversa sicut asseris invenis, alii viro nubere desiderat, & conjugali affectu conjungi. Unde licet Romana Ecclesia non consueverit propter talem infirmitatem, vel propter alia maleficia legitimè conjunctas dividere, si tamen consuetudo generalis Gallicanæ Ecclesiæ habet, ut hujusmodi matrimonium dissolvatur; nos patienter tolerabimus, si secundum eandem consuetudinem, eidem mulieri cui voluerit nubendi in Domino concesseris facultatem. By this we do find, that the Church of *Rome* it self doth grant no Separations in Matters of Matrimony, where the Church of *France* doth; and if the Pope permit in *France* it self, that a Divorce should be made, it is but a Toleration, and not this neither, but where it is *consuetudo generalis Ecclesiæ Gallicanæ*; which if you will apply unto this Cause in Question, you must shew me, that in *England* it hath been a general Custom, that a Nullity in Marriage may be pronounced *propter impotentiam versus hanc*; which if you cannot shew, as indeed you cannot, nor give any true Example, that ever hath been of any such Separation within this Church; I may both in Law and Conscience conclude, that I dare not introduce any Novelty, and so consequently pronounce for the Nullity of this

this Marriage. Many things are done in *France*, whereof if we in *England* had the Examination, we ſhould peradventure find the Fact different from that which they conceiv'd; or if we agree in the Fact, we ſhould give another Sentence. It is not unknown how, within the Space of one Year, there hath been much a-do in *France*, about two Women, *Magdalen* and *Louyſe*, pretended to be poſſeſſed with a great many Devils, and how *Verrine*, a principal Spirit in one of them, hath avowed and maintained the Maſs, Invocation of Saints, Adoration of Images, and a great many other Points of the Groſſneſs of Popery; and a Book hereof hath been printed and reprinted in *Paris*, with Approbation of the State, and Allowance of learned Men; in which the Church of *England* would certainly diſſent, and proclaim the whole Buſineſs to be but an Impoſture; as the very like was in the Days of Queen *Elizabeth*, when the Devils of *Denham* were ſaid to poſſeſs *Sarah Williams* and her Siſter, and ſome other Perſons; and much a-do was made of it, and divers fond People believing thoſe Knacks, turn'd Papiſts thereupon; yet the Iſſue of all was, that it proved no better than a ſhameful Deluſion, and a great abuſing of credulous and light-believing Perſons.

3. But

3. But now to proceed farther; if it ſhall be ſaid, It is not the Novelty, nor the Want of Cuſtom here in *England*, which ſhould prejudice the Truth; *valeat veritas*, whereſoever or whenſoever it appears: The Proofs are evident whereupon we do ſtand, and that will enforce the Sentence. My Anſwer thereunto is, let that be made manifeſt, and clear and perſpicuous, unto the Conſcience of an underſtanding Man, and I ſhall concur with you; but how ſhall I find this in a Matter of this Quality? Becauſe it is nothing elſe but Truth which we do aim at, it were fit that all Probations, if not which are poſſibly, yet at the leaſt which reaſonably may be had, ſhould be got together to enforce a Concluſion of this Conſequence. My Books tell me, *In valore matrimonii inveſtigando quæcunq; probationes poſſibiles adhibendæ ſunt, & potius debent eſſe ſuperfluæ quàm diminutæ.* Prov. 25. It is *Solomon*'s Saying, *It is the Honour of a King to find out a thing.* And wherein can Judges beſtow their Time better in a Point of Difficulty, than to ſearch and ſearch again, by all honeſt and good Means, to know what is the Bottom of that which lieth ſecret, that ſo they may ſatisfy their own Conſcience, and the Conſcience of others, in the Sentence which they give, and leave no kind of Scruple, which may trouble their own Thoughts?

Thoughts? Whether theſe things have been done in this preſent Caſe, I appeal to your own Conſciences; whether the Writers do not mention divers things; whether the Council for my Lord have not ſpoke of ſundry Matters; whether we that be the Judges, have not thought of divers Courſes convenient to be held; of all which, no Piece or Parcel hath been permitted unto us. The Proofs then which we have had, do ariſe only out of the Depoſitions, and if there be not Proof ſufficient, where ſhall we ſeek for it? Let us then conſider them. I will tell you my Opinion of them. I find nothing in them all, which is not in Subſtance contained in the Anſwers of my Lord of *Eſſex*; a noble Perſonage ſaith, that in the hearing of divers things, the Earl hath ſaid, that he was not able to know his Lady carnally; the Earl thinking this to be true. But this is but a Relation of Wonder ſpoken extrajudicially; and therefore for the underſtanding of the Truth therein, we are to have Recourſe unto that, which by the ſaid Earl is judicially depoſed. Divers Witneſſes do ſpeak, that the Earl and the Lady have lived and lain together for divers Years, my Lord doth acknowledge it in his Anſwer; the Matrons and Mid-wives do declare, that in their Judgment, my Lady is a Virgin, and therefore that ſhe was never known car-

carnally by the Earl; himſelf confeſſeth that he did never know her. So that now, all in Subſtance depending upon his Lordſhip's Anſwer, it ought to be our Labour to ſcan that exactly, and to judge of it circumſpectly. Doth not he then ſay, *in reſponſione ad quartum*; that tho' divers times, in the firſt Year of their Cohabitation, he did attempt to know her (which divers times may be twice or thrice, and no more) yet in the two latter Years, he did never attempt it? But doth he not ſay plainly, *in reſponſione ad tertium*; that ſince the time of his Marriage, he had not, nor hath any Sickneſs or Impediment, to hinder him, but that he might have had, and may have carnal Knowledge with a Woman. This is for the General, that he hath no Impediment; but *in reſponſione ad quintum*, doth he not deſcend more particularly unto his own Lady; that it is true that he did never carnally know the ſaid Lady *Frances?* Mark now what followeth; but that to the Act of carnal Copulation, he did not find any Defect in himſelf. Indeed he was not able to penetrate into her Body; but he layeth the Faults of that upon her, as may be ſeen in his Anſwer unto the 7th Article. And it may not be forgotten, that in the End of the Anſwer to the 4th Article, he ſaith, that ſometimes ſhe refuſed him; theſe things are evident, and can-

cannot be denied. The only Matter which maketh ſhew againſt this, is, that he acknowledgeth that he hath lain by her, and hath had no Motion to have carnal Knowledge of her; but eſpecially, that in the End of his Anſwer unto the 6th Article; and believeth he never ſhall. Theſe Words are the Shield and Buckler of the contrary part; but how eaſily do they vaniſh away, or fall to the Ground! For I appeal unto you all, who were preſent at the Examinations (and thoſe were ten of us in Number, who now ſit here preſent) whether the Earl did not openly ſubjoin that to his Anſwer; *When I came out of* France, *I did love her, but I do not ſo now, neither ever ſhall I.* I appeal unto the Conſcience of you all, except my Lord of *Winton*, and my Lord of *Rocheſter*, who were not then Commiſſioners, whether this be ſo or no; here then is the Matter, it is the Want of Love, which reſtraineth all Motions of carnal Concupiſcence, and not any Impotency; it is *defectus voluntatis*, and not *defectus poteſtatis*. Let Diſcontentment be removed, and there will be an End of all the Inability: Married Men beſt know theſe things; but out of common Reaſon, there can be no great Longing, where there is no great Liking; many things they ſay fall out between Man and Wife, that for ſome good Space of time, there

there is no carnal Conjunction, and yet no Impotency concluded thereby may be. The Caſe is famous of *Pulcheria*, Siſter unto the Emperor *Theodoſius* the younger, who having vowed Virginity, was notwithſtanding afterward, for great Reaſon of State, thought fit to be marry'd unto *Martianus*, who thereupon was choſen Emperor; ſhe would not condeſcend thereunto, till ſhe had Promiſe from him, that her Virginity ſhould be preſerved, and with ſuch a Promiſe he did marry her, ſo that they lived together in Shew as Man and Wife; but indeed as a Brother and a Siſter. Our Stories do make mention, that he who was called Saint *Edward* in *England*, I mean King *Edward* the Confeſſor, did marry a Lady, the Knowledge of whoſe Body he never had, neither did this wedded Couple ever endeavour to break their Virginity. The Writers do declare no other Reaſon hereof, but that they had an Opinion, that to live in Virginity, was the more meritorious, according to the Superſtition of thoſe times. Now were it not a ſtrange Argument, to conclude in this manner, that becauſe *Martianus* had not conjugal Copulation with *Pulcheria*, therefore he was a Man impotent; or, becauſe King *Edward* had not carnal Knowledge of his Wife, therefore he could not know her. I know the Circumſtances of this preſent Queſtion do differ

differ from thoſe, but the Ground of the Argument is the ſame. Want of Act upon private Reaſon, will never enforce a Want of Power. And this is our Caſe, as I underſtand it, which maketh me unwilling to conſent to this Nullity.

4. There followeth now another Argument, which I ſhall deliver briefly. We have always agreed, that the Chapter in the Law, which containeth our Caſe, is the Chapter *Litera de frigidis & maleficiatis*; for if it be not there, it is no where to be found. When we have deliver'd many things appertaining to this Cauſe out of the beſt Writers of the former Ages, or of our own time, as that my Lord ſhould be inſpected, or that Phyſicians ſhould uſe their Art to diſcern and remove Impotency, if any were to be found, or that Faſting, Prayer, and Alms ſhould be exerciſed to over-come this Evil, and divers other Points of like Nature; it hath ſtill been anſwered to us, to ſay the Interpreters, but it is not in the Law; or it is in the Decrees which bind not, but it is not in the Decretals; or it is a Council and Exhortation; but it is no Mandate or Injunction. I now therefore mention ſome things, which is in the Law, and in the very Body of this Law, and it is the Pope's Mandate; and that is, that my Lord ſhould have given his *juramentum cum ſeptima manu*, as well as my

my Lady; for Want whereof, the whole Proceeding is annullated. This is the Pope's Commandment, *Quocirca mandamus*, and it requireth the Oath of both, *ipſis cum ſeptima propinquorum manu firmantibus juramento, ſe commiſceri carnaliter nequiviſſe*, then *proferatis divortii ſententiam inter eos.* This is a thing ſo clear, that when on *Thurſday* laſt, by chance, there fell mention of it; the Coun-

Dr. Stuard, *Dr.* Byrde.

cil for my Lady were ſo far from giving Anſwer to it, that to ſpeak plainly, they ſtood as Men blaſted or blighted with a Lightning, and knew not which way to turn them; as was manifeſt not only unto us, but to all the Standers by; which I do not utter to do them any wrong, for they are worthy Men, both learned and faithful to the Cauſe which they undertake; but the Note is, that this Objection can receive no true Anſwer. I know, that ſince that time, there hath been Labour made, to give a Salve to this Sore, but no Man's Wit can do it. I ſaid, and ſay ſtill, that no Man's Loquence, neither any Man's Eloquence, can perſwade me, that *ipſis firmantibus juramento* is of the ſingular Number. I know there hath been tumbling and turning of Books, to find ſome Shew to meet with this Objection, but nothing can be found, which will hold out this Water. The Proceeding there-

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fore doth appear to be unperfect and defective in that, which is mainly required by the Law, which makes me to conclude in this fashion against some unperfect Speech touching my Lord of *Essex*; his affirming or denying of his own Inability towards my Lady; that either he doth confess it or deny it: If he do acknowledge it, where is then his Oath *cum septima Manu*, which the Law imposeth? If he do deny it, where is then your Proof of his Inability, since you ground the whole Substance of the Nullity upon his Lordship's Answer, *That he could not know her carnally.*

I must yet crave Patience to go a little farther. One other Exception which I take unto this Nullity, is the manner of the Sentence, which by us is to be given, which hath ever been resolved should be in general, not expressing any Reason particular wherefore we do give it. To say that my Lord is *impotens in genere versus hanc*, and not to tell wherein, is to propound a Riddle to the World, which no Man understandeth. It were a strange Thing in Learning, to say, that such a Creature is Animal, and not to tell whither it be a Man, or a Horse, or a Fish, or a Bird. And although it hath been said, and strongly maintain'd, *That it is enough in a Sentence to pronounce a Thing in general, and that*

Sir *Julius Cæsar*, Sir *Daniel Dun.*

the Judge is bound to give no Reaſon of it; yet I would be glad to know whether, howſoever I will conceal the particular Reaſon from the Hearers or Standers by, yet were it not fit, that I who am the Judge, and muſt give the Sentence, or at leaſt conſent unto it, ſhould know the Ground whereupon I do give it. Give me leave to ſpeak my Conſcience, I think ſuch a Sentence, that *propter latens aliquod impedimentum*, which is *perpetuum & incurabile verſus hanc*, is nothing but a device to ſerve a preſent Turn, which we muſt deliver in ſuch obſcure Words, to blind Poſterity that comes after, and to amuſe thoſe which will inquire into it, as if we had known ſomething which we held not fit to utter, when in Truth we know nothing. I find the Texts of the Law do ſtill ſet down the Reaſon, and give a Caſe particular, as Frigidity, or Section, or unfitneſs of the generative Part, or ſome ſuch other Matter; but for an Inability, *propter latens impedimentum*, my dulneſs is ſuch, that in the whole Book I cannot diſcover it: And it is a Myſtery that cannot enter into me, how a Man ſhould be potent unto other Women, and impotent to his Wife, if it be not in Caſe of Phrenſy, which is not *latens impedimentum*, and which alſo findeth *lucida intervalla*. It was the Aſſertion of him in the Law, *That he did not know*

Cap. Littera.

know his Wife, but that he had a Power to know other Women. But what wiſe Man doth believe him? Or what is there in the Text which doth declare it to be true? I will end this Point with that of our Saviour in the 29th of St. *Matthew*, That there are three Sorts of Eunuchs, or Men unfit to marry; the one is of God's making, the ſecond is of Mens making, and the third is of their own making. The firſt are they that are paſt from their Mother's Belly, who either are *frigidi*, or ſuch as have not Members fit for Generation, or ſome apparent Debility. The ſecond are thoſe who are caſtrated by Men, or by ſome violence have that hindred in them, whereunto by Nature they are fit in reſpect of Procreation. I will not here diſpute that idle *Maleficium*, becauſe your ſelves are flown from it. The third hath no coherence with this Nobleman. Let me know then, in which of the former two you do place it. Is he paſt from his Mother's Womb? why then do you give him leave to marry again? that he who hath deluded and fruſtrated one, may alſo delude another. If he be in the ſecond Rank, why do you not tell us what the Violence is which he hath ſuſtained from Men, or from any other Creature. Let us have, I pray you, ſome kind of Satisfaction, and let not this Ænigma in general blind us, leaſt the World ſhould ſay,

that wilfully we ſhut our Eyes againſt the Truth.

6. One Reaſon I have more, why I yield not to this Nullity, and then I have done. It is drawn from the Inconveniencies which will follow thereupon, if we diſſolve the Matrimony in ſuch Caſe as is now deſired. I look firſt on the detriment and harm which will follow, if the Marriage do continue in force, and in vigour, and I do find, that all the inconvenience doth redound but to one Perſon. Between a Lady and her Husband there is ſome diſcontentment, which Time and God's Grace may eaſily remove: There is then an end of that Controverſie. Or if the diſagreement ſhall never be appeaſed, it is no more but one Lady doth want that Solace which marital Conjunction would afford unto her; which many a good Woman is enforced to endure, and yet commits no Sin, neither labours to violate the Laws of the Church: For ſuppoſe the Husband be ſick of ſome long Diſeaſe, or languiſhing Weakneſs, muſt not the Wife ſuſtain it with patience and quietneſs? Suppoſe the Husband be Captive in ſome Forreign Nation, or Priſoner in his own Country, whereby occaſion of marital Complexion is taken from the Wife, no Divine will pronounce, that a Separation is in this Caſe to be ſought. Let a Woman do that in Modeſty which others are inforced to do

out

out of Neceſſity; and let her expect God's leiſure, in Faſting and in Prayer, and in other Humiliation. This is all the Inconvenience which ariſeth to one Perſon, if ſhe have not the Performance of conjugal Duty.

But look on the other ſide, what are the Incongruities, or rather Abſurdities which will eaſily follow, if ſuch Diſſolutions of Marriages be permitted. I will name only two. The firſt is the hazard of violating and annulling of Marriage by an ordinary Practice; for if the Gap be open, who will not run in: And the Judge muſt diſpenſe the Law indifferently to all, if the Proofs be accordingly; for we may not ſay, that it is for noble Perſonages, and great Peers in the State, and not for others of inferiour Rank. Whatſoever Couple therefore have no Children, and live diſcontented, come preſently to take part of this general Jubilee: And, albeit they know in their Conſciences, that it which they attempt is unlawful; yet to ſatisfy their Fancy, they will collude the one with the other, and enter a Proſecution ſecretly agreed upon, howſoever in open ſhew they ſeem to differ the one from the other: And who can doubt, but for Money or Favour, they may procure Witneſſes, and others who are to be uſed by the formality of the Law, to teſtify and depoſe ſo much as ſerves the Turn. By which means we are at a fair paſs, when

not only the Marriage Bed ſhall be defiled, and Adulteries made frequent, which is againſt the ſecond Table of the Law, but Perjury ſhall be committed, and God's Name taken in vain, which is repugnant unto the firſt Table.

A ſecond Inconvenience is the Danger, leaſt both Parties which are freed from their Matrimony, ſhould divers Years after be returned to it again, when perhaps the Husband by a ſecond Wife hath Children, and the Wife by a ſecond Husband hath ſtore of Iſſue alſo; for there is no doubt in the Law, but if a Man ſuppoſed to be *frigidus*, and therefore divorced, ſhall afterwards Marry, and by begetting of Children ſhew himſelf not to be impotent, but apt for Generation, this Man is to be taken from his ſecond Woman, and returned to his firſt Wife, and the Woman for whoſe Marriage a Nullity was pronounced in reſpect of the Inſufficiency of her Mate, muſt be now taken from her ſecond Companion, and returned to the firſt. Of this the Reaſon is apparent, *quia decepta eſt Eccleſia*, they adjudged him to be impotent upon wrong Information, whom Experience and Truth hath declared to be potent. And what Man can foretel, how variety of Times may produce other Judgments. There may be Queſtion of Land or Inheritance, of Legitimation or Illegitimation; and a wife Man

Man would be unwilling to bring it on the Stage when he is dead and gone; and to make it the Fable of the World, whether his Children be born lawfully, or to be reputed in the Rank of Baſtards. The World is ſubject to much mutability, and Judges of future Times may peradventure be led with the Power of ſome great Perſons, and perhaps may think upon other Conſiderations; that it is but a Conceit, that a Man ſhould be potent unto another Woman, and impotent to his Wife; or that the Common Law doth not know any *Maleficium*, or that they do not believe, that there may be *latens impedimentum perpetuum*, and *incurabile verſus hanc*, when they ſee that the Huſband is in ſhew of the World, a luſty, able Man, and hath well proved his Potency, by begetting Three or Five, or Seven, or Ten Children upon another Woman. Theſe are pretty Things, if a Man do well conſider them, and will ſerve to make diſtraction between Kinſman and Kinſman, and make work for the Lawyers, and keep the Courts at *Weſtminſter* that they ſhall not be idle; which if we could not learn otherwiſe, yet *Bury*'s Caſe before remember'd doth teach us, who was divorced from his Wife in the 3d or 4th Year of Queen *Elizabeth*, and when his Brother had enjoyed his Land until the 40th Year of the ſaid Queen, then was he thruſt out of it, and

the queſtion'd Son, or his Heir, was put into Poſſeſſion of it by Trial of Law; a great deal of Money being ſpent in that Contention, and both Civilians and common Lawyers in great Numbers were entertain'd of both Sides; and yet the Controverſy was not ſo appeaſed, but that of my certain Knowledge, within theſe three Years it had been raiſed again, and a ſtrong device was laid how to bring this about again; only my ſelf withſtood it, and would not give way unto it, when I was divers Times conſulted thereabout; conceiving very well, that it would not be long before ſome Prohibition would come out of ſome of the King's Courts, becauſe the common Law diſliked, that Mens Inheritance, eſpecially after Judgments, ſhould be diſturbed, when the Parties whom moſt of all it concerned, are dead long before, and cannot anſwer for themſelves; whereas, peradventure, if themſelves had been living, they could have anſwered that for themſelves which other Men know not. And there ought to be a ſettled Courſe in all Things appertaining to Inheritance.

By this Time, I hope you ſee, that it is not out of willfulneſs, or prejudicate Conceit, that I have impugned this Nullity, but out of ground of Reaſon, and out of ſcruple of Conſcience, which is it that muſt accuſe me, or excuſe me, before the ever-

living

living God. I know you have heard what other Men have ſaid, and they have anſwered for themſelves. Upon all which Grounds I make this Concluſion, That howſoever this Matter of Separation with great earneſtneſs hath been perſued, yet it is the ſurer and the ſafer way to leave it as we find it, and in no Caſe to diſſolve it. I oft remember that Saying, which is frequent among the Canoniſts; *Tolerabilius eſt aliquos contra ſtatuta hominum dimittere copulatos, quam conjunctos legitimè contra ſtatuta Domini ſeparare.* That concerneth us who be the Judges, and for the Parties themſelves, who perhaps can be content to be ſevered, and to Marry elſewhere, let them know this from me, that they may beſt expect a Bleſſing from God when they live in that State where feweſt ſcruples ſhall ariſe in their Mind: From which, whether they ſhall be free in leaving their old Conjunction, and betaking themſelves unto a new, I refer to their wiſer Thoughts, when in all probability, if any croſs or thwart ſhall ariſe in their new intended Matrimony, this perplexity and anguiſh will ſtill follow their Souls, that they have done that, whereof in their trueſt Meditations they have no ground of Conſcience, and therefore that it is the Hand of God upon them, who giveth not a Bleſſing unto that which was unduly ſought.

You have thus at large heard my Opinion againſt the annullation of this Marriage. Now, if you ask me, what would you then have done concerning this Couple of noble Perſonages: my Anſwer is, that I would have a Reconciliation by all means to be laboured; and although that be difficult to bring about, yet it is the more Honour when it is effected. Charity will forgive, and forget the higheſt Offences. It is St. *Auguſtine*'s Judgment, *That in the greateſt Breaches between Man and Wife, Reconciliation is the beſt; and the worthieſt Pains that can be beſtow'd, is to bring that about.* There wanteth only one or more good Mediators, and then great Things will be compaſſed. The diſagreement was inconceivable between God and Man, yet Chriſt, that great Mediator, did take it away. The Breach was very bitter between *England* and *Spain*, yet our moſt bleſſed Soveraign, as a gracious Interceſſor, did give an end unto it. Let Divines be uſed now, as much as Lawyers have been uſed heretofore. Take the godly Counſel of the one, which will be given freely, as you have taken the Advice of the other with much expence of Money. This I wiſh for, this I pray for, and if my Counſel had been uſed, before Things grew to this height, I would have uſed my beſt means to have wrought an Atonement. But becauſe there is no hope thereof, and this

this doth expect a legal Deciſion, proceed you that pleaſe unto this Separation. Give your Sentence in *ſcriptis*, as you have declared your Opinion in *verbis*. Five might have ſerved the turn by the Words of the Commiſſion, if ſeven had diſſented, but you have ſeven Suffrages, and therefore proceed; only this I crave of the Regiſter, that he do make his Act, that this Sentence is given, *Joanne Epiſcopo* London, D. *Joanne Bennet milite*, D. *Franciſco James*, D. *Thoma Edwards diſſentientibus*, *potiſſimum verò* Georgio *Archiepiſcopo* Cantuarienſi *renitente*.

This is the Subſtance of that Matter, which the Archbiſhop of *Canterbury*, out of certain Notes which he had drawn up, was ready to have uttered, and no one material Point is added thereunto, as appeareth unto me, the Writer hereof, comparing it with the Notes at ſuch Time as I ended the writing of this, which was on the 28th of *September* 1613. three Days after the Time when it ſhould have been ſpoken.

The

The KING's Letter to the Archbiſhop of *Canterbury*.

My Lord,

AFTER I had received, and read your Papers, which the Biſhop of *Litchfield* brought me, I found it very neceſſary that I ſhould make anſwer thereunto at my firſt leiſure; for whereas, before, at my laſt meeting with you, ye ſeemed to me to be only as yet unreſolved what Sentence to give in this Buſineſs till you had heard it throughly diſputed, that by that means ye might be fully informed of the State of the Cauſe: it appears now by theſe Papers, that you have, after your laſt Days conſultation, put on a negative Reſolution, grounded upon Fundaments of Divinity and Conſcience, as you think, which hath mov'd me to ſend you herewith my Judgment upon your Arguments, in regard that I did ever hold it neceſſary that in a Matter of this Weight all my Commiſſioners ſhould be as near of one Mind, as might be, and therefore I would be ſorry that your private Conceits

ſhould

ſhould ſo blind your Judgment, as to make you and your Followers draw the * Catharrows againſt your Yoke-fellows; for, that I may now open plainly my Heart unto you, at my firſt reading of your Papers from the Biſhop, I chance to caſt mine Eye firſt upon the Paper of your Arguments before I had looked upon your Letter, and lighting upon your firſt Words, *In as much as we do firmly believe*, &c. I proteſt I thought it had been ſome ſtrange Confeſſion of Faith, that you had intercepted amongſt ſome of the Sectaries; but when I had read out the reſt of that firſt Article, God is my Judge, I thought that Paper had been ſome Paſquil made againſt this Divorce, which coming to your hands ye had ſent me, and therefore without reading any farther therein, I looked upon your Letter, which reſolv'd me of all theſe Doubts; but after that I had fully peruſed, and rightly conſider'd of all your Papers, I found your Principles ſo ſtrange, and your Doubts ſo far ſought, that I thought it neceſſary, as I have already ſaid, to ſet down unto you my Obſervations upon them. But to conclude my Letter with that plainneſs that becometh one of my Quality, I muſt freely confeſs, that I find the Grounds of your Oppoſition ſo weak, as I have reaſon to apprehend, that the Prejudice you

* *Perplex or torment.*

have

have of the Perſons, is the greateſt Motive of breeding theſe Doubts into you; which Prejudice is the moſt dangerous Thing that can fall in a Judge for miſleading of his Mind. And the Reaſon moving me to this Apprehenſion, is partly grounded upon your laſt Words to me at your parting from *Windſor*, and partly upon a Line ſcrap'd out in your Paper of Doubts, for I am ſure you think me not ſo blunt a Secretary, but that I can read a Line ſo ſcraped out. In your laſt Speeches with me, you remember you told me what Aſſurance you had of the Earl's Ability out of his own Mouth, which you ſaid you could not but truſt, becauſe he was ſo religious a Nobleman. But when I told you of the other Party's contrary Affirmation, you remember how you uſed the Word of Iniquity, and how far your interlined Line ſeems to have a Harmony with this Word, your ſelf can beſt judge. Now then, if I would ask you what Proof you have of the one's Religion more than the other's, you muſt anſwer me, by judging upon the Exterior; and how deceivable that Gueſs is, daily experience teaches us. But with a holy Proteſtation that I never knew any Thing but good in the young Earl. Was not this the Ground of Maſter *Robert Bruſe*'s Incredulity, becauſe he knew the Earl of *Gowry* to be truly Religious; and did not beg a Regiſter. *Bothwel* in his Preface of his Book

De

De viris Illuſtribus. And as for your Judgment of the other Party, *Chriſt's Precept* is the beſt Anſwer unto you, *nolite judicare.* But if the Queſtion were to judge of the Earl's Inclination, whether is it likely that you or I could beſt judge of it; I, he having been bred with my late Son, and ſerv'd him ſo long, or you that never ſpoke with him but once or twice in your Life, and never knew either good or evil of him but out of his own Mouth. I will conclude therefore, with inverting the Argument; that if a Judge ſhould have a Prejudice in reſpect of Perſons, it ſhould become you rather, to have a kind of Faith implicit, in my Judgment, as well in reſpect of ſome Skill I have in Divinity; as alſo that I hope no honeſt Man doubts of the uprightneſs of my Conſcience; and the beſt thankfulneſs that you that are ſo far my Creature, can uſe towards me, is, to reverence, and follow my Judgment, and not to contradict it, except where you may demonſtrate unto me that I am miſtaken, or wrong imformed, and ſo farewel.

JAMES R.

The LIBEL promoted by the Lady FRANCES HOWARD, againſt ROBERT, Earl of *Eſſex*, before the King's Delegates, Authorized under the Broad Seal. *Ann.* 1613. *Viz.*

GEORGE, *Archbiſhop of* Canterbury; JOHN, *Biſhop of* London; LANCELOT, *Biſhop of* Ely; RICHARD, *Biſhop of* Litchfield *and* Coventry; *Sir* JULIUS CÆSAR, *L. L. D. Sir* THOMAS PARREY, *L. L. D. Sir* DANIEL DUNN, *L. L. D.* JOHN BENNET, *L. L. D.* FRANCIS JAMES, *L. L. D.* THOMAS EDWARDS, *L. L. D.*

I. FIRST, that She, and *Robert*, Earl of *Eſſex*, were married by publick Rites and Ceremonies of the Church, on the 5th Day of *January*, 1606.

II. That

II. That ſhe at that time was full Thirteen Years old, and is at this preſent, about Twenty Two, or Twenty Three.

III. That the foreſaid *Robert*, at the time of the pretended Marriage, was about Fourteen Years old, and is at this preſent, about Twenty Three or Twenty Four, and at that time, and ever ſince, and at this preſent, is a Man (as far forth as a Man can judge) and hath been in good Health and perfect Eſtate of Body, not any way hindred by any *Ague* or Sickneſs, but that he might have carnal Copulation with a Woman.

IV. That ſince the pretended Marriage, at leaſt by the Space of whole and continuate Three Years, after the ſaid *Robert* had fully attained to the Age of Eighteen Years, as Time and Place did ſerve, after the faſhion of other married Couples, the ſaid *Frances Howard*, in hope of lawful Iſſue, and that ſhe might be made a Mother, lived together with the ſaid *Robert* at Bed and Board, and lay both naked and alone in the ſame Bed, as married Folks uſe; and deſirous to be made a Mother from time to time, again and again, yielded her ſelf wholly to his Power, and as much as lay in her, offer'd her ſelf, and her Body

dy to be known, and earneſtly ſought and deſired Conjunction and Copulation.

V. And alſo the ſaid Earl in the aforeſaid time, very often, again and again, did try to have carnal Copulation, as with his lawful Wife, which ſhe refuſed not, but uſed the beſt Means ſhe could; notwithſtanding all this, the ſaid Earl could never carnally know her, nor have that Copulation in any ſort which the married Bed alloweth.

VI. Yet before the ſaid pretended Marriage, and ſince the ſaid Earl hath had, and hath Power, and Ability of Body, to deal with other Women, and to know them carnally, and ſometimes hath felt the Motion, and Prick of the Fleſh, tending to carnal Copulation, as he ſaith and believeth, and peradventure truly; but by a perpetual, and natural Impediment, hath been hindred all the former time, and is at this preſent, that he can have no Dealing or Copulation with the foreſaid Lady *Frances*.

VII. Furthermore, the ſaid Lady *Frances* hath been, and is a Woman fit and able to have Copulation with a Man, and ſuch an one, as may be carnally known, neither hath in this regard any Impediment.

VIII. More-

VIII. Moreover the ſaid Lady *Frances* remaineth, and is at this preſent a Virgin.

IX. Beſides, at the time of the pretended Marriage, the ſaid Lady *Frances* was utterly ignorant and unacquainted with the ſaid Earl's Unability, and Impediments formerly mentioned.

X. Alſo the foreſaid Earl long before this Suit commenced, hath very often, and at ſundry times confeſſed in good Earneſt, before Witneſſes of Credit, and his Friends and Kinsfolk, that although he did greatly deſire, and did his beſt Endeavours, yet he never could, nor at this preſent, can have carnal Copulation with the ſaid Lady *Frances*, no not once.

XI. Laſtly, in regard of Womaniſh Modeſty, the ſaid Lady *Frances* hath concealed all the former Matters, and had a Purpoſe for ever to conceal them, if ſhe had not been forced by falſe Rumours of her Diſobedience to the foreſaid Earl to reveal them. She requireth, that ſince this pretended Matrimony is but in *facto*, and not in Right, it may be pronounced, declared, and adjudged as void, and of no Force, and that ſhe may be freed, and quit from all

all Bonds and Knots of the ſame, by your Sentence and Authority.

The Earl of ESSEX *replieth*, July 5, 1614.

I. HE anſwereth to the Firſt and Se-
II. cond Articles Affirmatively.

III. He thinketh that at the time of his Marriage, he was full Fourteen Years old, and is now Twenty Two and upwards, neither ſince hath had, or now hath any Sickneſs or Impediment to hinder him, but that he might have had carnal Knowledge of a Woman, ſave in the time of his Sickneſs of the *Small Pox*, for two or three Years after his Marriage, which continued a Month or ſix Weeks, and that at another time, when he had ſome Fits of an *Ague*.

IV. He affirmeth, that for one Year, he divers times attempted, and that the two other Years he did lie in Bed moſt commonly with her, but felt no Motion or Provocation, and therefore attempted nothing. The firſt Year, when he was willing, ſometimes ſhe ſhewed her ſelf ready, ſome other times refuſed.

V. He

V. He ſaith, he never carnally knew her, neither found he any Defect in himſelf; but confeſſeth that he was not able to penetrate into her Womb, nor enjoy her.

VI. He believeth, that before and after the Marriage he hath had an Ability of Body to know any other Woman, and hath often times felt Motions and Pricking of the Fleſh, tending to carnal Copulation; but for perpetual and natural Impediments towards the Lady *Frances*, he knows not what the Words mean; but that he hath lain by her Two or Three Years now laſt paſt, and had no Motion to have carnal Copulation with her, and believeth he never ſhall.

VII. He believeth not that the ſaid Lady *Frances* is a Woman apt and fit for carnal Copulation, becauſe he hath not found it.

VIII. IX. He believeth to be true.

X. He believeth, that once, before ſome Witneſſes of good Credit, he did ſpeak to this purpoſe; That he had often times endeavour'd carnally to know her, but that he did not, nor could not.

DOUBTS *conceived out of the Fact and Proceſs, in the Suit between the Lady* FRANCES HOWARD, *and the Earl of* Eſſex.

I. WHether the Libel be defective, eſpecially in the Fourth Article, where it is ſaid, that *Dominus Comes Eſſex pluribus & iteratis vicibus* (which may be verified and ſatisfied in two or three times) *dictam dominam Franciſcam ejus uxorem prætenſam cognoſcere tentavit*, &c.

II. Whether the Anſwer of my Lord of *Eſſex*, to the ſaid Fourth Article in that Behalf, being but thus, (*that he did divers times attempt*, &c.) be full, certain, and ſufficient.

III. Whether in this Caſe my Lord of *Eſſex* his Oath (*cum Septem manu propinquorum*) be not by Law requiſite as well as my Ladies.

IV. Whether my Lord of *Eſſex* ſhould be inſpected by Phyſicians, to certify (ſo far as they can by Art) the true Cauſe and Nature of the Impediment.

V. Whe-

V. Whether by triennial Co-habitation, there having been no carnal Copulation between them, (*Impedimentum maleficii*, being accidental) *presumatur præcessisse vel potius subsecutum fuisse matrimonium, contractum & solemnizatum.*

VI. Whether they ought *post præceptem Judicis* (notwithstanding their triennial Cohabitation before the Suit began) to cohabit together, *saltem per aliquod temporis spatium arbitrio Judicis moderandum*, for farther Trial, *&c.*

The Lord Archbishop of Canterbury's *Reasons against the Nullity.*

IN as much as we do firmly believe, that the Scripture directly, or by Consequence doth contain in it sufficient Matter to decide all Controversies, especially in things appertaining to the Church; and that Marriage amongst Christians can be no less accounted than a sacred Thing, as being instituted by God in Paradise, honoured by the Presence of our Saviour himself, declared by St. *Paul*, to be a Figure of the Spiritual Conjunction between Christ and his

his Church; I would be glad to know, by what Text of Scripture, either of the *Old* or *New Teſtament*, a Man may have a Warrant to make a *Nullity* of Marriage, ſolemnly celebrated in *facie Eccleſiæ propter maleficium verſus hanc*; which I do the rather ask, becauſe I find Warrant expreſly in Scripture, to make a Nullity of Marriage, *propter frigiditatem*, by the Words of our Saviour, *Mat.* 19. 12. *For there are ſome chaſt, or Eunuchs, which were ſo born of their Mother's Belly; and there be ſome chaſt, which be made chaſt by Men; and there be ſome chaſt, which have made themſelves chaſt for the Kingdom of Heaven.*

I would alſo know gladly, what antient Father, either amongſt the *Greeks* or *Latins*, by Occaſion of Interpretation of Scripture, or any Diſputation hath mentioned, *Maleficium verſus hanc*, or declared it to be a Cauſe of Nullity in Marriage.

The like I demand touching the antient Councils, either general or provincial, and concerning the Stories Eccleſiaſtical, whether any ſuch Matter be to be found in them.

If for ought that appeareth, never mention was made of this, till the time of *Hincmerus Epiſcopus Rhemenſis*, who lived Nine Hundred Years after Chriſt; it may well be conceived, that this was a Concomitant of Darkneſs and Popiſh Superſtition, which about that time, grew to ſo great an Height,

God

God permitting then the Puniſhment to fall upon the Children of Unbelief.

But ſince the Light of the Goſpel is now in ſo great Meaſure broken out again, why ſhould I not hope; but thoſe who have embraced the Goſpel, ſhould be free from this *Maleficium?* eſpecially ſince amongſt a Million of Men in our Age, there is not one found in all our Country, who is clearly and evidently known to be troubled with the ſame. And if there ſhould be any that might ſeem to be thus moleſted, we are taught to uſe two Remedies againſt it; the one ſpiritual Phyſick, the other external.

For the firſt, our Saviour ſaid, *Hoc genus damoniorum non ejicetur niſi per orationem & jejunium.* And St. *Peter* ſpeaking of the Devil, *Cui reſiſtite firmi in fide:* And the Canoniſts themſelves preſcribe Alms, Faſting, and Prayer, to be uſed in that Caſe; but that they join ſuperſtitiouſly their Exorciſms thereunto. And for corporal Phyſick to be applied as againſt a Diſeaſe; it is the Judgment of our late Divines, whether they ſpeak of *Maleficium* or not.

Now admit the Earl of *Eſſex* might be imagined to be troubled with *Maleficium verſus hanc*, I demand what Alms have been given? What faſting hath been uſed, what Prayers have been pour'd out to appeaſe the Indignation of God towards him, or his Wife, or what Phyſick hath been taken,

or Medicine applied for Eight Years together? Not one of theſe things; but the firſt Hearing muſt be, to pronounce a Nullity in the Marriage. Of which Declaration we know the Beginning, but no mortal Man's Wit can foreſee the End either in his Perſon, or the Example.

TESTIMONIES *produced by the Archbiſhop, for his Opinion.*

Judicium Philippi Melanchthonis de Divortiis ex impotentia in loco de conjugio; quod Chr. Pezelius ſuis in Melanchthonis examen exemplificationibus inſeruit, Secunda Parte.

PErſonæ quæ ſunt idoneæ ad commixtionem conjugalem nequaquam fiunt conjuges, ſed cum explorata eſt frigiditas, Judex pronunciet illas Perſonas liberas eſſe. Nec fit tunc divortium, quia non erat conjugium juxta dictum, Mat. 19. *ſed fit declaratio, ut alii ſciant, illam ſocietatem non eſſe conjugium, & perſonæ quæ habet naturæ vires integras, concedi aliam fæliciorem copulationem legitimam. Sed ad explorandam frigiditatem Jura tempus conſtituunt, ſi res dubia eſt, ne ante triennium fiat ſejunctio. Eodem modo pronunciant de iis in quibus natura ita læſa eſt facino aut veneficio,*

ut

ut ope medica ſanari non poſſit, ſi toto triennio fruſtra tentata eſt medicatio.

Tanta autem eſt virtus aliquarum mulierum, ut occultent imbecillitatem virorum, ſicuti viri doctiſſimi Simonis Grynei *ſoror narravit, ſe, mortua prima conjuge, duxiſſe viduam virginem, quæ undecem annos nupta fuerit viro frigido, nec unquam ullì ante mortem viri hanc rem patefecit. Hæc Melanchon in locis: Loco de conjugio, quæ Chriſtopherus Pezelius ſuis in Melanchonis examen explicationibus inſeruit, & eis adjecit hanc annotationem. Impotentia alia naturalis, alia accidentaria eſt. Naturalis, cum quis natura non eſt idoneus ad commixtionem conjugalem. Accitentale, cum quis eſt caſtratus, aut veneficio corruptus. Rurſus quæ ex veneficio accedit impotentia, aut curari poteſt medicamentis, aut eſt perpetua. Ex his diſtinctionibus ſumitur explicatio queſtionis, An, & quomodo impotentia ſit cauſa divortii. Nam inter impotentes, non poteſt conſtare conjugium, quia deeſt cauſa ſufficiens & finalis. Primum, ni perſona illa quæ ſana eſt, decepta fuit, & ignorans duxit impotentem, non igitur potuit eſſe conſenſus, qui eſt cauſa efficiens Matrimonii. Secundo duplex eſt finis conjugii, unus eſt generatio ſobolis, ſicut dicitur, Creſcite & Multiplicamini: Alter finis eſt Vitatio confuſionis libidinum, juxta dictum: Vitandæ fornicationis cauſa unuſquiſq; habeat uxorem. Hæc Pezelius 2 parte Explicat: in Examen Melanchon.*

Hemingii Judicium lib. de Conjugio, Repudiis & Divortiis. Professoris Theol. in Academ.

INhabilitas corporum ad usum matrimonii divortii causa est, & nonnunquam fascino & veneficio adeo inhabiles reduntur viri, ut nunquam sanari possint. Sed plura sunt judicii perpendenda, antequam divortii sententiam ferat. Primum, an impotentia præcesseret Nuptias. Secundum, an sit subsecuta Nuptias. Tertium, an sit curabilis. Quartum, an ejus rei mulier conscia fuerit ante Nuptias. Si præcesserit Nuptias, potest liberari persona sana divortium petens, non enim fuit verum conjugium, siquidem non legitime consentiunt, cum unus fallit, alter errat, fallit impotens, errat potens. Cum ergo Deus nec fallacium nec errorem probat, non est dicendus eos conjunxisse. Proinde Judex, si intellexerit ex probationibus incurabile esse vitium, mox declarabit suo testimonio, non fuisse Matrimonium; verum si spes sit curationis, triennium statuatur, in quo patienter expectetur curatio, quæ si frustra tentata fuerit, Judex pronunciabit Conjugium nullum fuisse.

Si subsecutum est vitium post nuptias & complexium maritalem conjugum, nullo pacto permittendum est divortium: fortuna enim afflicta,

flicta, ſi abſit culpa, patienter in conjugio ferenda eſt. Si alter fuerit conſcius infirmitatis alterius ante nuptias, cogantur ſimul habitare, & alia officia ſibi mutuo præſtare: Nam perſona conſcia vitii alterius abſque dubio fraudem meditata eſt, quæ fraus non debet illi prodeſſe, ſi poſtea divortium petat. Hæc Hemingius libello de Conjugio, Repudio, & Divortio.

Polani profeſſoris Theol. nuper in Academia Baſilienſi Judicium.

CONjugium inire poſſunt, qui non ſunt natura vel arte Spadones, aut quibus natura non eſt læſa faſcino aut veneficio. Tales enim perſonæ nequaquam fiunt conjuges. Ideo etiam nuptiis celebratis cum trienni ſpatio explorata eſt ſpadonis frigiditas, aut toto triennio tentate eſt naturæ læſæ medicatio, Judex pronunciare poteſt illas perſonas liberas eſſe. Polanus lib. 10. Syntag. c. 53.

* Arcularii nuper profeſſoris Theol. in Academia Marpurgenſi Judicium.

* *Sive Treularii.*

INter perſonas quæ propter frigiditatem aliumve naturæ vitium ad uſum conjugii ſunt ineptæ, cum non ſit conjugium, teſte Chriſto, Mat. 19. *divortium hic locum habere poterit. Si quam igitur perſonam talem alteri jungi contingat, Judex, explorata frigiditate aut naturæ vitio, utramque perſonam liberam pronunciabit. Porro ad explorandam frigiditatem Jura triennii tempus præſcribunt, præſertim ſi res dubia ſit. Idem judicium eſt de eis quorum natura vel faſcino vel veneficio ita ſit læſa, ut ad conjugii uſum reddanter inepti; & omnem medicorum operam intra triennium inanem fuerint experti. Hæc Arcularius in arcu fœderis, cap.* 28.

Bezæ Judicium in lib. de Divortiis.

SPonſalia cum perſonis paralyſi immedicabilii, quæ corpus prorſus enervavit, frigiditate inſanabili, genitalium partium privatione, vel adeo inſigni læſione, ut perpetua coitus impotentia

tia neceſſario conſequatur, affectis, contracta prorſus inutilia ſunt, cum ad matrimonium à Deo vocati videri non poſſint, qui fidem in ſponſalibus datam præſtare, naturali objecto vitio nequeunt. Quod ſi ſponſalibus factis, conjugio tamen nondum reipſa conſummato, ejuſmodi malum ſupervenerit, ſentio ejuſmodi ſponſalia, veluti Deo ipſo jubente, dirimenda, ut, quid objecto perpetuo impedimento, palam demonſtret ſibi iſtiuſmodi ſponſalia non placere. Beza lib. de Divort. & Repud. pag 91. Genev. 1591 impreſſ.

Atque hanc ſuam doctrinam Beza multis ex ſacræ ſcripturæ teſtimoniis probat: ſed tantum pag 94. ei duas cautiones adjecit. Primam, ſi frigidus poſtea convaluit, repetere priorem uxorem, errore, viz. *Separatam oportet, etiamſi alteri poſtea eſſet conjuncta: ſecundam cautionem, recto omnino in iſtiuſmodi controverſiis conſtitutum eſt: ne quod videlicet fieret quod poſtea mutari ſine magno offendiculo non poſſet, ut triennium ſaltem ab ipſo copulationis,* i. e. *ductæ uxoris die expectaretur, priuſquam iſti morbi inſanabiles eſſe, & ſponſalia conjugiave dirimenda pronunciarentur. Hoc autem omnino de iis vitiis accipiendum eſt quæ per ſe non patent. Nam alioqui, ut in erectione, vel ſiquis naturæ vitio, teſtibus aut genitali membro careat, quorſum ullum temporis intervallum?*

Zanchii Judicium in lib. 4. de operibus Dei, cap. 3. non tamen impotentiam ex veneficio attigit.

Quemadmodum Beza, sic nec Zanchius impotentiam ex veneficio attigit, sed tantum docet, quosdam esse casus, quibus matrimonia in ipsa Ecclesia benedicta nulla sint, & subinde hæc exempla subjungit. Si cum eo contrahitur, qui vir non erat, sed spado, aut propter perpetuum ei insanabilem morbum, officium conjugis præstare nullo modo potest. Hæc Zanchius, lib. 4. de op. Dei, cap. 3. sed illam nec scripturæ testimoniis nec rationibus confirmat.

Non eadem sentire bonos de rebus eisdem,
Incolumi licuit semper amicitia.

His Majesty's Answer to the Archbishop's Reasons.

TO the first Article, that the Scripture directly, or by Consequence doth contain sufficient Matter to decide all Con-

Controverſies, eſpecially in things appertaining to the Church; this in my Opinion is *propoſitio erronea*, and one of the Puritan's Grounds, without a better Diſtinction or Explanation. For the Orthodox Propoſition is, That the Scripture doth directly, or by Conſequence, contain in it ſelf ſufficient Matter to decide all Controverſies in Points of Faith and Salvation; of which ſort a Nullity in Marriage cannot be accounted for one; and therefore your Conſequence upon the former Propoſition muſt fail.

For farther Satisfaction to your former Queſtion, I ſay, your own Second Queſtion doth anſwer it: For if there be a Warrant in Scripture for pronouncing a Nullity, *propter frigiditatem*, then all the Means, which may make him *frigidus verſus hanc*, muſt be comprehended therein. For why doth our Church juſtly condemn as inceſtuous, the Marriage of a Man with his Siſter's Daughter, or the Marriage of Two Siſters, but *à Paritate Rationis?* for none of them is in *terminis* prohibited by the Scripture, only the Concluſion is gather'd *à Paritate Rationis*. For if it be not lawful to marry your Father's Wife, becauſe thereby you diſcover your Father's Shame; nor his Siſter, becauſe ſhe is his Kinſwoman; nor your own Siſter, becauſe thereby you diſcover your Father, and Mother's Shame:

It can no more be lawful to marry your Sister's Daughter; for thereby you also discover your own Shame. As also that the same Reason serves for ascending or descending, in Points of Consanguinity, *quia par est Ratio.* The like is in this Case, for altho' Christ spake only of three sorts of Eunuchs, yet *ratio est quia non potest esse copula inter Eunuchum & mulierem*, and therefore St. *Paul* in the 6th of the *Corinthians*, telleth us clearly, that it is no *Conjunction sine copula:* I conclude therefore, *à paritate rationis*, that Christ did comprehend under those three sorts of Eunuchs all Inability, which did perpetually hinder *Copulam versus hanc*, whether it were natural or accidental. For what Difference is there betwixt cutting off of the Hand, and being made impotent thereof? *Amputatio & mutulatio Membri*, is all one in the Civil Law, and it is alike defrauding of the Woman, when either he who is to be her Husband is gelded, or when the Use of that Member towards her is by any unlawful Means taken from him. Neither is it any way needful to crave the particular Warrant of Nullity, *propter Maleficium*, out of the Scripture, no more than there is Warrant in that Place for any Nullity at all. For Christ doth not directly say, that a Marriage so made shall be null; neither doth he teach us what Form of Process shall be

be uſed in it; neither maketh he mention of a triennial Probation, no more than he forbiddeth Marriage within the Fourth Degree, without Leave obtained of the Biſhop of the Dioceſs. It is therefore ſufficient to all moderate Chriſtians, to be taught out of the Word, that Marriage is null *ſine Copula*, and that the Word *Quos Deus conjunxit*, is never found in the Scripture, where *erunt εἰς σαρκαμίαν* doth not precede, (*viz. they ſhall be one Fleſh.*) But whether the Impediment be univerſal, or *verſus hanc* only, and whether the Fault thereof have been born with him, or done to him by Violence, or fallen by Diſeaſe, or by Diſproportion, or Ineptitude betwixt the Parties, or by unlawful or unnatural Practices, it is ever *par ratio*: He is *Eunuchus verſus hanc*; for he ought to be *Eunuchus verſus omnes alias*, ſeeing to her only he was married; and therefore *à Paritate Rationis*, ſuch Nullities are grounded upon the aforeſaid Warrant of Scripture; neither had Chriſt then any Occaſion to ſpeak to the *Jews* concerning *Maleficium*; for as it is apparent, that God made King *Abimelech* and his Family unable to abuſe *Sarah*, *Abraham*'s Wife; and ſo was he made by God himſelf *Eunuchus verſus hanc*: is it not improbable, that the Devil being God's Ape, ſhould imitate God's Work by his filthy Witchcraft, by making ſuch as God will

will permit him, *inhabile versus hanc*, tho' it may be, that it was long after that time, before the Devil put that Trick in use upon the Earth.

As to your Third and Fourth Questions, What mention the Fathers, and Councils make of *Maleficium versus hanc?* First, I answer, That it may be, if they be well searched, that either something to this purpose shall be found in them; or at least *aliquid analogum*, which *à paritate rationis*, or by Consequence, may serve to decide this Question. But leaving this to the Search, my main Answer is, That we must distinguish of Times. For in all the first Ages, as long as Persecution lay heavy upon the Church, and before that the Emperors became Christians, the Church did not meddle with Questions of Marriage; for the Civil Judges determined them, who would not suffer the Church to meddle with any thing which drew a Consequence after it of Possessions, and Inheritance, as Marriage doth. Nay, even divers hundred Years, after the Conversion of the Emperors, the Judgment and Decisions of all such Questions did still remain in *foro Civili*, till the Popedom began to wax great, and assume, or rather usurp to her self a Power of Supreme, or Independent Judicatory in all Ecclesiastical Causes: And therefore the Fathers, and Councils had

had no Occaſion to make mention of that which was not *eorum fori* at that time. And beſides that, it is an evil Argument to ſay, that ſuch a thing is unlawful, becauſe the Fathers, and firſt Councils make no mention of it. For you know much beter than I, that divers main Points in Controverſy betwixt the Papiſts and us, are never mention'd by the Fathers, becauſe they could never have dreamt that ſuch Queſtions would ariſe; and therefore we only find the Fathers exact in ſuch Queſtions, as were moſt agitated, and upon the Stage in their time; as *de Trinitate: de duabus in Chriſto Naturis*, and ſuch like. It is therefore ſufficient, that there can be nothing found in them, which may be juſtly underſtood to contradict this Opinion; and it is very probable (as I ſaid before) that this Trick of *Maleficium* had not then been put in Practice in the World, and therefore not known, nor mentioned by them; for why may not the Devil find out as well new Tricks of Witchcraft, when God will permit him, as he doth daily new ſorts of Hereſies? for his Malice can never end, till the End of Times.

To your Fifth Argument my former Anſwer doth alſo ſerve. For till the Nine Hundredth Year of God, it may be, that that deviliſh Trick came never to be diſcovered, and you know the old Proverb,

Ex

Ex malis moribus bonæ leges, and it is not unlikely that that Time of Darkneſs gave the Devil occaſion of deviſing of ſuch new Tricks. Look my *Demonology*, and yet was that Law, for which you cite *Hincmarus Epiſcopus Rhemenſis*, made by *Charles the Great*, who in many great Points, as you know, had ſo great Light, as I dare ſcarcely term his Time a Time of Blindneſs. But how great and palpable ſoever that Darkneſs was in Points of Superſtition, I will ſtill maintain it, as I have ever done, that for Matter of Order and Policy, all the World ſhall never be able to find out any other ſo good, and ſo old an Order of Government to be put in the place of it. In ſign whereof, there is no well governed Commonwealth in the Chriſtian World, where the Canon Law is not received to judge in Queſtions of that Nature; and it is certain, that this Queſtion in hand is only a Queſtion of Order and Policy; for the Grounds of this Queſtion, *That the eſſential Point of Matrimony cannot be accompliſhed, ſine Copula*, is warranted by expreſs Scripture, and confeſſed by your ſelf.

To your Sixth Argument, or rather Hope, I fear that Hope ſhall prove contrary to Faith. For as ſure as God is, there be Devils, and Devils muſt have ſome Power, and their Power is in this World, (for *Satan* is the Prince of this World:)

Neither

Neither are the Elect exempted from his Power; *Job* was not; St. *Paul* was not: Christ saith to all his Disciples, *Cribravit vos Satanas.* And if the Devil hath any Power over the Elect, it is over their Flesh; and if over the Flesh, rather over the fleshest, and most sinful part thereof; whereunto original Sin is so tyed, as God, both before and under the Law, to shew the difficulty of purging Mans original Sin, ordained the amputation of the Fore-skin of that Member. And to exempt those of our Profession from the Power of Witchcraft, is a Paradox never yet maintained by any Learned, or Wise Man. That the Devils Power is not so universally unbridled amongst us, that I freely confess, but that it is totally restrained, *quoad nos*, how then was a Minister of *Geneva* bewitched to Death? And how are the Witches daily punished by our Laws? Surely if they can harm none but the Papists, we are too Charitable to labour for avenging them only. *Satan* is permitted to punish Man as well for the breach of the Second, as the First Table; and thereof are we no less Guilty than the Papists are. And if the Power of Witchcraft may reach to our Life, how much more to a Member? especially to a Member so governed by the Fantasie, wherein the Devil hath his principal Operation, and he may so estrange the Husband's

Affection

Affection from the Wife, as he cannot be able to perform that Duty unto her. For it is a common Thing in many Mens Nature, that they cannot do that Act but where they Love, nor Fight but when they are Angry. God keep us therefore from putting the Trial of our Profeſſion upon Miracles; let the Miracle-mongers live by their own Trade.

To your Seventh Argument touching the Remedies, what do you know whether both Parties, or either of them, have uſed both thoſe Remedies or not? And that that ſpiritual Remedy of Faſting and Prayer ſhould be uſed publickly for them, I can ſee no neceſſity. For *non intereſt Reipublicæ nec Eccleſiæ.* And private Perſons are commanded to uſe their Faſting and Alms ſecretly, and in private; beſides, that no ſuch Remedy or Cure is likely to ſucceed well, except the Parties own Heart and Deſire be ſet upon it.

And as for your Concluſion upon the *incommodum*, either in theſe Perſons, or in the Example, I can ſee none in either; for as to this Couple, (betwixt whom Marriage was never truly accompliſhed,) they will peradventure both of them by the declaratory of this Nullity, be made capable to accompliſh lawful Marriage with others, (which they could not do betwixt themſelves) wherein they may live to the ſatisfaction

faction of their Hearts, and enjoy the Bleſſing of Procreation of Children. And as to the Example, the Law ſhall be fulfilled by due Adminiſtration of Juſtice, which cannot ſerve for an Example or Preſident of counterfeited Nullites in Time to come; for, *Notoritas facti*, or rather *non facti*, is *luce clariorie* in this Caſe. Beſides the many legal Probations and Confeſſions of the Parties, which have been taken in this Proceſs; whereas by the contrary, if they ſhall be forcibly kept together, their Names, or ſhadows may well be kept together, but never their Perſons or Affections; and they ſhall be forced to live either in perpetual Miſery and Scandal, or both: And what ſuch a forced Continency can avail, the Monks Continency can teach us. And for a Preſident in time to come, it can reach no further than to open a way of lawful Relief for any Parties who ſhall chance to be diſtreſſed in that ſort. *Hac eſt mea ſententia.*

2. And, as for the Extract of our late Divines Opinions upon this Queſtion, I confeſs, I cannot gueſs what your intent was in ſending them unto me, for they all agree in *Terminis* with my Opinion, that there is ſuch a Thing as *Maleficiati verſus hanc*; and your very interlined Paſſages prove it clearlieſt. As for their Advice concerning the Remedies, that is, *Conſili-*

um,

um, non jus, nec Decretum; not imposing a necessity; but is to be used by discretion, as occasion shall serve, or require it.

1. As for the legal Doubts of formality, they concern none of your Calling. If your Conscience be resolved in the Points of Divinity, it is your part to give your consent to the Nullity, and let the Lawyers take the burthen of making it formal.

And as for the triennial Probation, I hope no Man can be so blind as to make a double triennial, both *Ante & post litem contestatam.* And in Conclusion, our new Divines Solution of this Question proveth clearly, that their Resolution upon this Doubt, (howsoever it was first conceiv'd in blindness, as you think,) yet is it now approved in the time of the greatest Light, and Purity of the Profession of the Gospel.

To conclude then, if this may satisfy your Doubts, I will end with our Saviour's Words to St. *Peter*, *Et cum conversus eris, confirma fratres tuos.* But I must add, *vel (si opus fuerit) converte fratres tuos.* For on my Conscience, all the Doubts I have yet seen made in this Business, are nothing but *Nodos in Scirpo quærere.*

The Midwives appointed to make Inspection upon the Lady's Body, gave in, that the Lady *Essex* is a Woman apt to have Copulation, and to bring forth Children, and that

that the ſaid Lady is a Virgin and uncorrupted.

Three Ladies affirm, That they believe the ſame, for that they were preſent when the Midwives made the Inſpection, and did ſee them give good Reaſons for it.

After theſe Matters were ſummed up, there was a Sentence of Divorce given for the Nullity of the Marriage, and both Parties licenſed to be married again.

The Commiſſioners who gave Sentence in the Lady *Eſſex*'s behalf were,

Wincheſter,
Ely,
Litchfield and *Coventry*,
Rocheſter,
} Biſhops.

Sir *Julius Cæſar*,
Sir *Thomas Parry*,
Sir *Daniel Dun*,
} Doctors of Law.

The Commiſſioners Diſſenting.

Archbiſhop of *Canterbury*,
Biſhop of *London*.

Sir *John Bennet*,
Francis James,
Thomas Edwards,
} Doctors of Law.

The

The Copy of the Divorce, drawn up in this Form, which followeth.

'IT is by these Presents declared, That 'whereas *Robert*, Earl of *Essex*, and 'the Lady *Frances Howard*, Contracted by 'shew of Marriage, did Co-habit in one 'House, and lie together in one Bed, *Nudus cum Nuda*, and *Solus cum Sola*; and 'that the said Lady *Frances* did shew her 'self prompt, ready to be known of him; 'and that the said Earl neither did, nor 'could have Knowledge of her, although 'he did think himself able to have Know-'ledge of other Women. And that the 'said Lady *Frances*, by inspection of her 'Body by Midwives, expert in matter of 'Marriage, was prov'd to be apt for carnal 'Copulation with Man, and yet a Virgin. 'Therefore we the said Judges deputed in 'the Cause, first invocating the Name of '*Christ*, and setting God before our Eyes, 'do Pronounce, Decree, and Declare, 'That the Earl of *Essex*, for some secret, 'incurable, binding Impediment, did ne-'ver carnally know, or was, or is able 'carnally to know, the Lady *Frances How-'ard*, and therefore we do Pronounce, have 'Decreed, and do Declare, the pretend-'ed Marriage, so Contracted and Solem-

'niz'd,

'niz'd, *de Facto*, between them, to have 'been, and to be utterly void, and to no 'effect; and that they did want, and 'ought to want the Strength of the Law; 'and that the Lady *Frances* was, and is, 'and ſo ought to be free, and at Liberty, 'from any Bond of ſuch pretended Mar-'riage, *de facto*, Contracted, and Solem-'niz'd. And we do pronounce, That ſhe 'ought to be Divorced, and ſo we do Free, 'and Divorce her; leaving them, as touch-'ing other Marriages, to their Conſcience 'in the Lord. Which our Definitive Sen-'tence, and Decree, we here Ratify and 'Publiſh.

Wincheſter,
Ely,
Litchfield and *Coventry*, } Biſhops.
Rocheſter,

Sir *Julius Cæſar*,
Sir *Thomas Parry*, } Doctors of Law.
Sir *Daniel Dun*,

The Earl of *Northampton* immediately haſten'd to Court with the News of this *Divorce*; and it was ſoon ſpread all over the Kingdom. The Earl of *Eſſex* in a great diſcontent left the Court, and repair'd to his Seat in *Warwickſhire*, near *Drayton*, and there lived a private Life.

An

An Account of the Intrigue between ROBERT CAR, *Earl of* Somerſet, *Viſcount* Rocheſter, *&c. and the Lady* FRANCES HOWARD, An. Reg. 10. An. Chriſti, 1612.

By ARTHUR WILSON, *Eſq;*

AMONG all our Hiſtorians, Mr. *Wilſon*, in his Life of King JAMES the Firſt, relates this Affair with the moſt exactneſs; and * *As he has given us a more full and particular Account of theſe Paſſages between the Earl of* ESSEX, *his Lady, and the Favourite*

* *See the Notes upon King* James's *Reign, in the Collection of the Hiſtory of* England, *Vol.* 2. *pag.* 687.

CAR;

CAR; *ſo he was beſt qualified to do it, being an intimate Boſom Acquaintance of the Earl, from his Youth to his Death. But if any unuſual Warmth be obſerved in his manner of relating them, it muſt be attributed to his Zeal for the Honour of his Patron.*

Having thus given the Motives that might in ſome Meaſure ſway Mr. WILSON in the Earl's behalf, I ſhall now produce his own Words, leaving the whole to the Reader's Judgment.

'The Treaſurer * CECIL, Earl of *Salisbury*, that great Engine of the State, 'by whom all Wheels moved, held an in-'timate Correſpondence with the Houſe of '*Suffolk*, which he had ſtrengthned with an 'Alliance; marrying his eldeſt Son, the 'Lord *Cranborn*, to *Katharine*, the eldeſt 'Daughter of that Family. And being 'mindful of the Aſperity and Sharpneſs 'that was betwixt him and the late Earl of '*Eſſex*, he thought it a good Act of Policy 'and Piety not to ſuffer Malice to become 'Hereditary, and therefore he was a great 'Means in marrying the young Earl of '*Eſſex* to the Lady *Frances Howard*, ano-'ther of thoſe Siſters, that the Father's 'Enmity might be cloſed up by the Son's

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* *See Mr.* Wilſon's *Hiſtory of King* James I. *pag.* 686. & ſeq.

'Nup-

'Nuptial Fraternity. The Earl of *Eſſex* 'was Fourteen Years of Age, and ſhe 'Thirteen, when they married; too young 'to conſider, but old enough to conſent: 'Yet by the Advice of Friends ſeparated 'after Marriage, ſhe under her Mother's 'Wing, and he viſiting *France* and *Germa-* 'ny, till Time ſhould mature and ripen a 'happy Co-union. The Court was her 'Neſt, her Father being Lord Chamber- 'lain; and ſhe was hatch'd up by her Mo- 'ther, whom the ſowr Breath of that Age '(how juſtly I know not) had already taint- 'ed; from whom the young Lady might 'take ſuch a Tincture, that Eaſe, Great- 'neſs, and Court Glories, would more di- 'ſtain and impreſs on her, than any way 'wear out and diminiſh. And growing to 'be a Beauty of the greateſt Magnitude in 'that Horizon, was an Object fit for Ad- 'mirers, and every Tongue grew an Ora- 'tor at that Shrine.

'The Prince of *Wales*, now in his Puber- 'ty, ſent many loving Glances, as Ambaſ- 'ſadors of his good Reſpects; and amo- 'rous Expreſſions are fit Subjects for jealous 'Reproaches to work on. Her Husband 'having been now Three or Four Years 'beyond the Seas, (ſick with Abſence from 'her whom his Defires longed after) came 'over again, and found that Beauty, which 'he had left Innocent, ſo faded and ſo-

'phiſticated,

'phisticated with some Court Drug which 'had wrought upon her, that he became 'the greatest Stranger at home. His Pa-'tience made way for him a while, and 'he bore up with a gentle Gale against the 'Stream of this Woman's Affections, which 'ran altogether (unknown to him) into a-'nother Channel. Nor was her Reputa-'tion yet become so robust, (being of a ten-'der Growth) to strike his Ears with Re-'proaches; and therefore he imputed her 'sly Entertainments to a Maiden bashful-'ness; till surfeited with that dull Potion '(upon better Advice) he went to the 'Earl of *Suffolk* (her Father) and demand-'ed his Wife, thinking himself capable to 'enjoy both her and her Love. The Fa-'ther, that thought there had been an In-'timacy betwixt them suitable to their 'Conjugal Knot, made use of his Paternal 'Power to reduce his Daughter to the Obe-'dience of a Wife. But while these 'Things were struggling for, a most violent 'Disease of a poysonous Nature, imputed 'to, but far transcending, the Small-Pox, 'seized on the Earl of *Essex*; and had not 'the Strength of Youth, and that Almigh-'ty Power that orders all things, wrought 'out the Venom of it, the Earth (as 'probable wish'd by her) had been his Marriage-Bed.

'For this Lady being taken with the 'growing Fortunes of ROBERT CAR, Vis- 'count *Rochester*, and grounding more 'Hope upon him than the uncertain and 'hopeless Love of the Prince, she cast her 'Anchor there, which the Prince soon dis- 'cover'd, and slighted her accordingly. 'For dancing one time among the Ladies, 'and her Glove falling down, it was taken 'up, and presented to him, by one that 'thought he did him acceptable Service; 'but the Prince refus'd to receive it, say- 'ing publickly, He would not have it, it 'is stretcht by another, meaning the Vis- 'count: This was an Aggravation of Ha- 'tred betwixt the King's Son and the 'King's Friend.

'The Countess of *Essex* having her Heart 'alienated from her Husband, and set up- 'on the Viscount, had a double Task to 'undergo, for accomplishing her Ends: 'One was, to hinder her Husband from 'enjoying her; the other was to make the 'Viscount sure unto her: For dishonest 'Love is most full of Jealousy. Her Hus- 'band she look'd upon as a private Person, 'and to be carried by him into the Coun- 'try, out of her Element, (being Ambi- 'tious of Glory, and a Beauty covetous of 'Applause) were to close (as she thought) 'with an insufferable Torment; though he 'was a Man that did not only every way

'merit

'merit her Love, but he lov'd her with an 'extraordinary Affection, having a gentle, 'mild, and courteous Diſpoſition, eſpeci-'ally to Women, ſuch as might win upon 'the rougheſt Natures. But this fiery 'Heat of his Wife's mounted upon the 'Wings of Luſt, or Love, (call it what 'you will) carried her after ſo much Miſ-'chief, that thoſe that ſaw her Face, 'might challenge Nature of too much Hy-'pocriſy, for harbouring ſo wicked a Heart 'under ſo ſweet and bewitching a Counte-'nance.

'To ſtrengthen her Deſigns, ſhe finds 'out one of her own Stamp, Mrs. *Turner*, 'a Doctor of Phyſick's Widow, a Woman 'whom Prodigality and Looſneſs had 'brought low; yet her Pride would make 'her fly any Pitch, rather than fall into 'the Jaws of Want. Theſe two conſult 'together, how they may ſtop the Current 'of the Earl's Affection towards his Wife, and make a clear Paſſage for the Viſcount 'in the Place. To effect which, one Doctor '*Forman*, a reputed Conjurer, (living at '*Lambeth*) is found out: The Women de-'clare to him their Grievances; he promi-'ſes ſudden Help; and to amuſe them, 'frames many little Pictures of Braſs and 'Wax, ſome like the Viſcount and Counteſs, 'whom he muſt unite and ſtrengthen; o-'thers like the Earl of *Eſſex*, whom he

'muſt debilitate and weaken; and then 'with Philtrous Powders, and ſuch Drugs 'he works upon their Perſons. And to 'practiſe what Effects his Art would pro-'duce, Mrs. *Turner*, that lov'd Sir *Arthur* '*Munwaring* (a Gentleman then attending 'the Prince) and willing to keep him to 'her, gave him ſome of the Powder, which 'wrought ſo violently with him, that, 'through a Storm of Rain and Thunder, 'he rode Fifteen Miles one dark Night to 'her Houſe, ſcarce knowing where he 'was till he was there. *Such is the Devil-'iſh and mad Rage of Luſt, heighten'd with 'Art and Fancy.*

'Theſe Things matur'd and ripen'd by 'the Cunning of this Jugler *Forman*, gave 'them Aſſurance of happy Hopes. Her 'Courtly Invitements, that drew the Viſ-'count to obſerve her, ſhe imputed to the 'Operation of thoſe Drugs he had taſted; 'and that Harſhneſs, and ſtubborn Com-'portment ſhe expreſſed to her Husband, 'making him (weary of ſuch Entertain-'ments) to abſent himſelf, ſhe thought 'proceeded from the Effects of thoſe un-'known Potions and Powders that were ad-'miniſtred to him: So apt is the Imagina-'tion to take Impreſſion of thoſe Things 'we are willing to believe.

'The good Earl finding his Wife nouſled 'in the Court, and ſeeing no Poſſibility to

'reduce

'reduce her to Reaſon, till ſhe were eſtran-
'ged from the Reliſh and Taſte of the
'Delights ſhe ſuck'd in there, made his
'Condition again known to her Father.
'The old Man being troubled with his
'Daughter's Diſobedience, imbitter'd her,
'being near him, with wearisome and con-
'tinual Chidings, to wean her from the
'Sweets ſhe doted on, and with much a-
'do, forc'd her into the Country. But
'how harſh was the parting, being rent a-
'way from the Place where ſhe grew and
'flouriſh'd? Yet ſhe left all her Engines
'and Imps behind her; the old Doctor,
'and his Confederate, Mrs. *Turner*, muſt
'be her two Supporters: She blazons all
'her Miſeries to them at her departure, and
'moiſtens the Way with her Tears. *Chart-
'ley* was an hundred Miles from her Hap-
'pineſs, and a little time thus loſt is her
'Eternity. When ſhe came thither (tho'
'in the pleaſanteſt time of Summer) ſhe
'ſhut her ſelf up in her Chamber, not ſuf-
'fering a Beam of Light to peep upon her
'dark Thoughts: If ſhe ſtir'd out of her
'Chamber, it was in the Dead of Night,
'when Sleep had taken Poſſeſſion of all
'others but thoſe about her. In this im-
'placable, ſad, diſcontented Humour, ſhe
'continued ſome Months, always mur-
'muring againſt, but never giving the leaſt
'civil Reſpect to her Husband; which the

'good Man ſuffer'd patiently, being loath 'to be the Divulger of his own Miſery: 'Yet having a Manly Courage, he would 'ſometimes break into a little Paſſion, to 'ſee himſelf ſlighted and neglected by him-'ſelf; but having never found better from 'her, it was the eaſier to bear with her.

'While ſhe was at *Chartley*, ſhe writ to 'her Confederates, That *her Husband found 'little Operation in their Drugs, complaining 'of his Luſtineſs and her Miſery: For* (ſhe 'ſaid) *the Viſcount would never love her, if 'her Husband did meddle with her, which 'with Difficulty ſhe yet impeded, but how long 'ſhe ſhould reſiſt his Violence, ſhe knew not; 'therefore ſhe implor'd their Aſſiſtance, if they 'would not ſee her the moſt deſpicable Crea-'ture in the World: And for Satisfaction, they 'ſhould make their own Price.* With this 'kind of Stuff ſhe fill'd her Letters, which 'were after found in *Forman*'s Cloſet. Theſe 'Inſtigations made him active; and the 'Man being skilful in Natural Ma-'gick, did uſe all the Artifice his Sub-'tilty could deviſe, really to imbecili-'tate the Earl; for no Linnen came near 'his Body, that was not rinſed with their 'Camphire Compoſitions, and other faint 'and waſting Ingredients; and all inward 'Applications were foiſted on him by cor-'rupted Servants, to leſſen and debilitate 'the Seminal Operations: which *Veneſici-*

'*um*

'*um* is one great part of Witchcraft, de-
'ſtructive to Nature, and horribly abomi-
'nable to be practiſed. And this in time
'wrought ſuch Effects upon his Perſon,
'that he found himſelf unable with her,
'tho' ſhe permitted him; yet when he had
'been from her ſome reaſonable time, to
'renovate his Spirits, by ſhaking off thoſe
'Artificial Applications, then his Abilities
'made her unwilling and refractory. Tho'
'ſome are of Opinion, that he was not
'much debilitated, but that ſhe got (by
'her virtuous Agents) an Artifice too im-
'modeſt to be expreſs'd, to hinder Pene-
'tration. And thus ſhe tormented him,
'till he was contented to let her ſteer her
'own Courſe, which after run her on
'Ground.

'For coming to *London* next Winter
'with this full Sail, loaden with Luſt, ſhe
'found the Viſcount much prepar'd for
'her; who being at firſt faſten'd on the
'Object, Abſence, and all thoſe little Ar-
'tifices that miſchievous Women and cun-
'ning Impoſtures could deviſe, had advan-
'ced him as much in his Deſires, as they
'had hindred the other. We could
'diſpute the Nature of theſe Operations,
'how far they are contingent, and how
'the Fancy works with them, tho' igno-
'rant of them, making their Impulſions
'more active, being the Sparks that kin-

‘ dle this combuſtible Matter; for we will
‘ never allow there was any other Diabo-
‘ lical Means uſed, Nature being ſtrong e-
‘ enough for ſuch a Production; but being
‘ not pertinent to the Story, will leave it,
‘ and follow them that found the Effects of
‘ it, and had Affections ſuitable to it, which
‘ they made uſe of with an unbridled Ap-
‘ petite, yet meeting cloſely in Corners,
‘ (Sin being at firſt ſhame-fac'd) but after-
‘ wards they grew more bold; and every
‘ Hour that the Viſcount could ſteal from
‘ his Royal Maſter, he dedicated it to his
‘ diſloyal Miſtreſs: Being caught in this
‘ Net of Adulation, he becomes a willing
‘ Priſoner; Luſt only getting Liberty to
‘ all Looſeneſs and Licentiouſneſs: Places
‘ of frequent Meetings are daily renew'd;
‘ Perſons fitted for ſuch Practices are em-
‘ ploy'd; and when Nature was exhauſt-
‘ ed, Art, her ſubtle Imitator, brought in
‘ her Store, to contribute new Spirits,
‘ purchaſed at any rate. All outward A-
‘ dornment, to preſent Beauty in her full
‘ Glory, were not wanting on both ſides,
‘ being Luſt's Fuel, which tended to the
‘ Conſumption of all Reaſon: And among
‘ the reſt, yellow Starch, the Invention
‘ and foil of Jaundice Complexions, with
‘ great cut-work Bands, and Piccadillies,
‘ (a thing that hath ſince loſt the Name)
‘ crouded in and flouriſh'd among us, Mrs.

‘ *Turner*

'*Turner* being nominated to be the first 'Contriver, happily in *England*, but the 'Original came out from *France*; which 'Fashion and Colour did set off their lean 'and sallow Countenances. Thus did the 'Viscount get the Conquest of two, the 'King, and this Lady, but could not sub-'due his own lustful Appetite.

'However, the King's Affections were 'not so monopoliz'd, but that his crafty 'Servant the Earl of *Salisbury*, had a good 'Hole, as well in his Councils as Trea-'sure: And being not well pleas'd to see 'himself bearded by a Youth, new started 'into the Affairs of the World, and moun-'ted by the Wing of Love, not of Merit, 'he cast out many Mists before him, to 'hinder and damp his Passage so, that 'the Viscount could not rise to that Pitch '(during his Life) that he afterwards ar-'riv'd at.

'On the 6th Day of *November*, Death 'depriv'd us of the King's eldest Son, 'Prince *Henry*, a Prince as eminent in No-'bleness as in Blood, and having a Spirit 'too full of Life and Splendor, to be 'long shrouded in a Cloud of Flesh.

'*Anno* 1613. The Viscount *Rochester*, 'all this while (tho' plung'd in Lust) was 'held up by the Chin in the Glories of the 'Court; and the Prince (that interposed 'betwixt him and the Beams of Ma-

jeſty) being remov'd, the Earl of *Saliſbury* (another Obſtacle) dying Six Months after the Prince, in the Way from the *Bath*; he now took full Poſſeſſion of the King's Favours alone. He executes the Place of Principal Secretary, receiving all Pacquets, and diſpatching Anſwers without the Knowledge of the King or Council; or if the King did know, his Love had hoarded up ſuch a Confidence in him, as he laid all out upon that Stock. *Rocheſter*'s greateſt Aſſiſtant was a private Gentleman, one Sir *Thomas Overbury*, by whoſe Compaſs he ſteer'd his Courſe, who (being a Man of Parts and Abilities) had wrought upon the Viſcount ſo, as not only to keep him in, and cloſe with the King, but to make him capable of managing the higheſt Affairs, if he had kept himſelf within the Circle drawn to his Hand. This Intimacy betwixt them, ſpake *Overbury*, an Actor in all his Privacies. And when he underſtood by the Viſcount his Intention of Marriage with the Counteſs of *Eſſex*, he oppos'd it with all the powerful Arguments he could uſe: For tho' he might be ſo active, in his Initiation of Favour with the Viſcount, to be Aſſiſtant to his Pleaſures, and for carrying forward ſome of his dark Contrivances, (thoſe Secretaries being always the greateſt Favou-

rites)

'rites) yet having now gotten good foot-
'ing in his Affection, and building his For-
'tune thereon, his Reason might tell him,
'there could be nothing more destructive
'to both their growing Hopes, than to lay
'a Foundation upon so much publick In-
'justice, as to marry another Man's Wife,
'her Husband living; therefore he pas-
'sionately perswaded him to cast his
'Thoughts upon a more honourable Ob-
'ject, and not one, whose Disloyalty (in
'her present Condition) was so much
'branded with Infamy, that the Marks of
'it would be visible on his Face. But the
'Viscount, bewitched with the Entice-
'ments of his Soul-ravishing Mistress, (un-
'capable of good Counsel) doth not only
'call home his Affections from *Overbury*,
'that had been long Leiger with him,
'(denouncing Enmity) but incites his Be-
'loved against him also; who mustering
'up all her Passions, with the greatest A-
'crimony, that a Feminine Malice could
'devise, she never left, till she had dis-
'charg'd all the Vollies of her Rage upon
'him. And the better to do it, she con-
'sults with her Uncle, the Earl of *North-*
'*ampton*, aggravating *Overbury*'s Offence,
'as tending to the Dishonour of their
'whole Family: That he (a petty Fellow)
'should dare to raise such Scandals against
'her Innocency. The Earl of *North-*

'*ampton*

'*ampton*, that knew of the Endearments 'betwixt the Viſcount and his Niece, (ſo 'baſe and mercenary was his Spirit) 'thought it good Policy to ſtop all Paſſa-'ges, that it might not come into the pub-'lick Mouth: For being in a Sphere elated 'above others, it was a Sin of a high Pre-'ſumption, for any of an inferior Orb to 'move but in its own Place, or meddle with 'what is above them. He therefore cloſes 'with the Viſcount, (whom in his flattering 'Acclamations by Letters, he makes a lit-'tle Deity) and after ſome Diſpute of the 'manner how to be revenged of *Overbury*, 'they conclude to diſpatch him by Poiſon, 'which could not be done ſo well in a pub-'lick way; and therefore they ſubtilly 'contrive to exaſperate the King a-'gainſt him, that being a Priſoner, and 'ſhackled by them to a Place, he might 'be a more ſettled Mark for their enve-'nom'd Arrows.

'About the ſame time, the King think-'ing fit to ſend an Ambaſſador into *Flan-'ders*, to the Arch-Duke (ſome ſay, into *'France*) the Viſcount recommended Sir *'Thomas Overbury* to the King for that 'Service, (extolling his Abilities, and Fit-'neſs for the ſame, publickly, that more 'Notice might be taken of the Affront) and 'the King made choice of him for that 'Employment. Which done, the Viſ-

'count

'count (under the Shadow of Friendſhip) imparts to *Overbury*, what Intentions the 'King had towards him; but he thought 'it would not be ſo convenient for him to 'accept of it, becauſe he ſhould not only 'loſe his Converſe and Company by ſuch 'an Alienation, (which he highly valued) 'but many a fair Opportunity of improving his Reſpects to him, in ſome better 'way of Advancement. *Overbury* had 'not been ſo little a Courtier, or a Man of 'ſo mean Reaſon, but that he was ſenſible 'what Diſpleaſure he ſhould pull upon 'himſelf, by refuſing the King's Commands: And therefore he told the Viſcount, that betwixt the King's Favours, 'and his Friendſhip, he had a great Conflict in his Spirit, being willing to retain 'both; but how he ſhould refuſe the 'King's Commands with Safety, he knew 'not. But the Viſcount, with fair Promiſes, prevail'd with him to ſet up his 'Reſt at home, upon higher Expectation, '(ſuch a ſweet Bait is Ambition!) proteſting to take off the Aſperity of the 'King's Anger from him, and ſmooth his 'Way ſo, as ſhould be for his better Advantage. When he had wrought *Overbury* in this Forge, he goes to the King, 'and blows the Fire, incenſing him with 'all the Aggravations he could; ſo that 'the poor Gentleman, for his Contempt

'was

'was forthwith committed to the *Tower*.
'And to prepare all things for his Recep-
'tion there, Sir *William Wade*, the late
'Lieutenant, was remov'd, and Sir *Jervis*
'*Ellowis*, a Perſon more ambitious than in-
'digent (having made his Way by Mony,
'the common Merit) was admitted to the
'Place.

'Now the Counteſs, like another *A-*
'*lecto*, drove furiouſly, her Chariot ha-
'ving two Wheels, which ran over all Im-
'pediments: One was, to ſue a Divorce
'betwixt her and her Husband, that ſhe
'might marry the Viſcount: The other
'was, to take away *Overbury*, the Blemiſh
'in her Eye, and that laid ſuch a Stain
'upon her, that nothing but his Blood
'could expiate. For theſe ſhe hath ſeve-
'ral Engines; the one muſt be acted O-
'vertly; the other Covertly, in dark
'Corners; and ſhe and her Agents find
'fit Miniſters for both.

'The Earl of *Northampton* reſenting his
'Nieces Grievances, makes the King ac-
'quainted with her Maiden Baſhfulneſs,
'how loth ſhe is to divulge her Husband's
'Infirmities, and how long it is ſince her
'Marriage, and yet ſhe hath not enjoyed
'the Happineſs of a Wife; that her Hus-
'band's Inability muſt needs be an unna-
'tural Conjunction, ſuch as neither Law
'nor Reaſon can admit of; and that there

'was

'was a great Affection betwixt the Viscount 'and her, so as there seem'd to be a more 'excellent Sympathy, and sweet Compo-'sition of Soul in them, more suitable to 'Reason and Nature, than in the State 'she was in Which was seconded by the 'Viscount's humble Submissions to the 'King's great Wisdom, who (he acknow-'ledg'd) had not only raised him to what 'he is, but may yet make him more hap-'py, by uniting him to a Lady of so much 'Honour and Virtue.

'The King, that took Delight to com-'pleat the Happiness of them he lov'd, 'commanded the Bishops to sue out a Di-'vorce between the Earl of *Essex* and 'his Lady, that the Viscount might 'marry her: For he had been practis'd 'formerly in *Scotland*, in his Minority, 'with the like Experiment. *Elizabeth*, 'Daughter to the Earl of *Athol*, being 'married to the Earl of *March*, under 'pretence of Impotency, but merely for 'Lust, (as the * Author reports) was Di-'vorced from her Husband, and married 'to the Earl of *Arran*, (the King's Favou-'rite) who had been before a Partner in 'her Adulterous Sheets, (so current is the 'Parrallel, and so equally are Lust and 'Ambition yoked together, that they both

* *Vid.* Johnston's *Hist. of* Scotland.

'(with

'(with full Violence) draw one and the 'ſame Way.)

'The Biſhops and others, having a Com-'miſſion under the Great Seal of *England*, 'to convene the Earl of *Eſſex*, and his 'Counteſs before them, ſent out their 'Summons, and they made their Appea-'rance accordingly. But before they pro-'ceeded, they cauſed a Jury of Twelve 'diſcreet Matrons to be impanell'd, to 'ſearch the Counteſs, whether ſhe were '(as ſhe pretended to be, and was repu-'ted) a Maid ſtill; for if ſhe were a Maid, 'they could faſten upon a Nullity, and ſo 'ſeparate them for the more Honour of 'her Virginity. The Counteſs being a-'ſham'd, and baſhful, to come to ſuch a 'Trial, would not expoſe her Face to the 'Light; but being to appear before the 'Matrons under a Veil, another * young 'Gentlewoman, that had leſs offended, 'was fobbed into the Place; and ſhe paſ-'ſed, in the Opinion, both of Jury and 'Judges, to be a Virgin.

'Theſe Biſhops, and the reſt of the 'Judges, could not be ignorant what ſcan-'dalous Reports of this Lady's Actions 'flew up and down, from Lip to Lip;

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* *Said to be one of Sir* Thomas Monſon's *Daughters, for the Counteſs was reported to have had a Child in the Earl's Abſence.*

'which

'which, however sweeten'd by the Partakers, carried an ill Savour with them in 'every honest Understanding, who were 'not blinded with Wilfulness, or deafned 'with Prejudice, which made the Bishops of '*Canterbury*, and *London*, decline the Business, though nominated in the Patent. 'But Kings will never want fit Ministers in 'corrupted Times, both in Church and 'Commonwealth, as long as there are degrees, and Places of Ascent to clime to. 'And though these Things floated a while 'upon the Streams of Greatness, yet there 'is one above that moves the Waters; 'who did not only see what pass'd in the 'Bishop's Palace, but in the closest Prison, 'which he discover'd to the Shame and 'Ruin of the Actors.

The Countess's Attempts against the Earl, by Sorcery.

THE Earl of *Essex* being a Gentleman of the fairest Character, and universally belov'd, he, out of the natural sweetness of his Temper, took frequent Occasions of admonishing his Lady against those Evils which common fame loaded her with. But she being averse towards him, and persuing with all her might the bent of her lascivious

ſcivious Inclinations, was deaf to his kind Intreaties, and privately conſpir'd his Deſtruction after the following manner.

She became acquainted with one Mrs. *Turner*, a Woman of a vicious Character from her Youth, and who encouraged her in her wicked Purpoſes againſt the Earl, by conſenting to Poiſon him, which they attempted, but their execrable Deſign not taking effect, the Counteſs writ thus to Mrs. *Turner*.

Sweet Turner,

AS thou haſt been hitherto, ſo art thou all my Hopes of Good in this World; My Lord is as luſty as ever he was, and has complain'd to my Brother Howard, *that he hath not lain with me, nor us'd me as his Wife; this makes me Mad, ſince of all Men, I loath him as the only obſtacle and hindrance, that I ſhall never enjoy him whom I love.*

Yours, &c.

FRANCES ESSEX.

The Earl having eſcaped this Plot, the hatred of the Counteſs ſtill increas'd towards him, and drew her headlong into her own Deſtruction. He perceiving himſelf leſs regarded, gives her freſh Advice, endeavouring, if poſſible, to reclaim her, which ſhe not in the leaſt regarded, but grew

grew more enrag'd, and in a great Fury ſhe takes her Coach, and repairs to Mrs. *Turner*, who was ready to aſſiſt in any evil Act; accordingly they repaired to one Dr. *Forman* at *Lambeth*, who was skill'd in the Magic Art; him they fee'd to join with them, who tried many Devices to bewitch the Earl; all which failing, at laſt they framed a waxen Image, and got a Thorn from a Tree that bore Leaves, and ſtuck them upon the *Privities* of the ſaid Image, by which means they accompliſhed their deſire.

This being done according to her expectation, ſhe repairs to her Houſe at *Chartley*, and thither the *Earl* comes to her. But whether the *Earl* was more luſty than ſhe expected, or what other accident happened, it is unknown. Nevertheleſs ſhe grew jealous of her Acts, and falls into a great Fear that all their Labour was loſt; whereupon ſhe wrote a Letter to Dr. *Forman* to this effect, *viz.*

Sweet Father!

ALthough I found you ready at all Times to further me, yet muſt I ſtill crave your help, wherefore I beſeech you that you keep the Doors cloſe, and that you ſtill retain the Lord with me, and his Affection towards me; I have no cauſe but to be confident in you; although the World be againſt me, yet Heaven fails me not; many are the troubles I ſuſtain; the doggedneſs

of

of my Lord, the crosſneſs of mine Enemies, and the ſubverſions of my Fortunes, unleſs you by your Wiſdom do deliver me out of the midſt of this Wilderneſs, which I intreat for God's ſake.

From Chartley,

Your Affectionote Daughter,

FRANCES ESSEX.

This Letter coming to the Hands of the old Maſter, procures a new attempt, and now he goes and inchants a Nutmeg, and a Letter, one to be given the Viſcount in his Drink, the other to be ſent to him as a Preſent; theſe Things being accompliſhed, he not long after died, leaving behind him ſome of thoſe Letters, whereby the Counteſs had intercourſe with him, in his Pocket, which gave ſome light into the Buſineſs, amongſt which this aforeſaid Letter was one.

Dr. *Forman* being dead, Mrs. *Turner* wanted one to aſſiſt her; whereupon at the Counteſs's coming to *London*, one *Greſham* was nominated to be entertained in this Buſineſs, and in proceſs of time was wholly intereſted in it.

The Counteſs upon her return, ſends Gratulations to the Viſcount, and with thoſe

those the Letter sent her by Dr. *Forman*, he reads it, and the more he reads it, the more he is entangled, for no Man knows the Mysteries that are contain'd in Evil Arts, and who can withstand the Mischiefs that are in evil Tongues? Whereupon he returns Answer, and new Places of meeting are assign'd; amongst the rest, one at *Hammersmith*; in the mean Time the Viscount makes dispatch of his Business, leaves Things half done, half undone, to the intent he might meet her, who had there stay'd for his coming above Two Hours, and being met, they solemnly saluted each other, fell into divers Discourses, and insinuating *Phrases*, from *Words* to *Deeds*, and from *speaking* to *acting* the Sin of Venery.

The Countess having obtained that she desired, and the Viscount caught in the Net of Adulation; the more he striveth to be loose, is caught the faster; so that Lust having by this means got liberty, being covered with Greatness, like a Fire concealed in a pile of rotten Wood, burst forth in all looseness and licentiousness, Places of more frequent, and private Meetings are concluded upon between them; Persons fitting for their Purposes being acquainted with their Proceedings; watch-words are given; all Things having relation to a certain end, make them the *bolder*, and more safely to accomplish that which both Time and Memory

mory cannot demonſtrate in former Hiſtories; now theſe good Parts, which ſeemed heretofore to be hopeful in the Viſcount, conſume to Cinders, and the Corruption remains to brand him in the Forehead for his *evil living*; his Modeſty becomes eclipſed, his Behaviour light, his Carriage unſeemly; in his Place nothing ſo coſtly; no Attire ſo uncouth, but at all Coſts and Charges he obtains it for the increaſe of Favour; new Faſhions are produced, that ſo he might ſhew more beautiful and fair, and that his favour and perſonage might be made manifeſt to the World; and to this purpoſe *yellow Bands*, *duſted Hair*, *curled*, *criſped*, *friſled*, *ſlicked Skins*, *open'd Breaſts*, beyond accuſtomed *modeſty*, with many other inordinate *Attires*, were worn on both ſides, to the ſhew of the World; ſo that for the increaſe of diſhoneſt Appetites, they were abundantly practiſed; ſurfeiting thus upon their *Pleaſure*, having been before accuſtomed unto hardineſs, cauſeth him to fall into all manner of forgetfulneſs, letting all Things go to wrack, careleſs in *Attendance*, neglecting *State Affairs*, ignorant of his own Worth, ſubjecting himſelf to the luſtful Appetite of an evil Woman; accounting no Time well ſpent, nor Hour deem'd ſo happy, as when *dalliance* and pleaſant Diſcourſes paſs between them, either in Words or Writing.

Time

Time could no longer conceal theſe ſecret Meetings, but at length the Marriage of the Viſcount and Counteſs were brought to light, which when made publick, every one declaimed againſt her, but extoll'd the Earl of *Eſſex*; however, an Order was forthwith ſent to him to repay her Portion of 5000*l*, to do which he was forced to ſell part of his Eſtate, thereunto willingly conſenting, that he might get rid of her. The King nevertheleſs continues his Favour to the Viſcount, and inſtall'd him Earl of *Somerſet*. But at laſt the joint Wickedneſs of all theſe Accomplices broke out in the Murder of *Overbury*, upon which occaſion, the following Letters found in Dr. *Forman*'s Cloſet after his Death, were produc'd in Court at Mrs. *Turner*'s Arraignment, by the Doctor's Widow.

The Counteſs's LETTER to Mrs. *Turner*, to procure an Inchantment for turning the Viſcount's Affections towards her.

Sweet Turner,

I *Am out of all hope of any good in this World, for my Father, my Mother, and my Brother ſaid I ſhould lie with him, and my Brother* Howard *was here, and ſaid, he would not come from this Place all Winter, ſo that all*

all comfort is gone, and which is worst of all, my Lord hath complained, that he hath not lain with me, and I would not suffer him to use me; my Father and Mother are angry, but I had rather die a thousand Times over; for besides the Sufferings, I shall lose his Love, if I lie with him, I will never desire to see his Face; and if my Lord do that unto me, my Lord is very well as ever he was, so as you may see in what a miserable Case I am, you must send the Party word of all, he sent me word all should be well, but I shall not be so happy, as the Lord to love me. As you have taken pains all this while for me, so now do all you can, for never so unhappy as now, for I am not able to endure the Miseries that are coming to me, but I cannot be happy so long as this Man liveth, therefore pray for me, for I have need, but I should be better if I had your Company to ease my Mind, let him know this ill News; if I can get this done, you shall have as much Money as you can demand; this is fair play.

Your Sister,

FRANCES ESSEX.

Burn this Letter.

A Letter from the Countess to Dr. *Forman.*

Sweet Father,

I Must still crave your Love, although I hope I have it, and shall deserve it better hereafter,

ter, remember the Galls, for I fear tho' I have yet no cause, but to be confident in you, yet I desire to have it as it is yet remaining well, so continue it still, if it be possible; and if you can you must send me some good Fortune; alas! I have need of it; keep the Lord still to me, for that I desire: and be careful you name me not to any body, for we have so many Spies, that you must use all your Wits, and all little enough, for the World is against me, and the Heavens favour me not. Only happy in your Love; I hope you will do me good, and if I be ungrateful, let all mischief come unto me. My Lord is lusty and merry, and drinketh with his Men; and all the Content he gives me, is to abuse me, and use me as doggedly as before. I think I shall never be happy in this World, because he hinders my good, and will ever, I think so; remember (I beg for God's sake) and get me from this vile Place.

Your affectionate, loving Daughter,

FRANCES ESSEX.

Give *Turner* warning of all Things, but not the Lord; I would not have any Thing come out, for fear of my Lord Treasurer, for so they may tell my Father and Mother, and fill their ears full of Noise.

There were also shewed in Court certain Pictures of a Man and Woman in Copulation, made in Lead, as also the Mould of Brass, wherein they were cast, a black Scarf also full of white Crosses, which Mrs. *Turner* had in her Custody; at the shewing of these, and inchanted Papers and other Pictures in Court, there was heard a crack from the Scaffolds, which caused great fear, tumult, and confusion among the Spectators, and throughout the Hall, every one fearing hurt, as if the Devil had been present, and grown angry to have his Workmanship shewed, by such as were not his own Scholars; and this Terror coming, about a quarter of an Hour after silence proclaimed, the rest of the cunning Tricks were likewise shewed.

Dr. *Forman*'s Wife being Administratix of her Husband, found Letters in Packets, by which much was discovered; she was in Court, and deposed that Mrs. *Turner* came to her House immediately after her Husband's Death, and did demand certain Pictures which were in her Husband's Study; namely, one Picture in Wax, very sumptuously apparalled in Silks and Sattins, as also one other sitting in form of a naked Woman, spreading, and laying forth her Hair in a Looking-glass, which Mrs. *Turner* did confidently affirm to be in a Box, and that she knew in what part or room of the Study they were.

Mrs.

Mrs. *Forman* further deposeth, that Mrs. *Turner* and her Husband would be sometimes three or four Hours locked up in his Study together. She did depose further, that her Husband had a Ring would open like a Watch.

There was also a Note shewed in Court, made by Dr. *Forman*, and written in Parchment, signifying what Ladies loved what Lords in the Court, but the Lord Chief Justice would not suffer it to be read openly in the Court.

Mrs. *Turner* sent *Margaret*, her Maid, to Mrs. *Forman*, and wished that all such Letters and Papers as concerned the Earl of *Somerset*, or the Countess of *Essex*, or any other great Personages, should be burned, telling her that the Council's Warrant should come to search the Study, and that all his Goods might be seized; whereupon she and her Maid *Margaret*, with the Consent of Mrs. *Forman*, burnt divers Letters and Papers, but yet she kept some without their privity.

There were also Inchantments shewed in Court, written in *Parchment*, wherein were contained all the Names of the Blessed Trinity, mentioned in the Scriptures; and in another Parchment, + *B.* + *C.* + *D.* + *E.* and in a third likewise in Parchment were written all the Names of the Holy Trinity; as also a Figure, in which was written this

this word, *Corpus*, and upon the Parchment was faſtned a little piece of the Skin of a Man.

In ſome of theſe Parchments, the Devils had particular Names, who were conjured to torment the Lord *Somerſet*, and Sir *Arthur Manwaring*, if their Loves ſhould not continue, the one to the Counteſs, the other to Mrs. *Turner*.

Finally, Theſe faithful Servants of the *Devil* obtain'd the due Reward of their Deeds. Mrs. *Turner* was ſerv'd firſt, who being found guilty of the barbarous Murder committed upon Sir *Thomas Overbury*, was Condemn'd for the ſame, and Hang'd at *Tyburn* on *Wedneſday*, *November* 10. 1615. Sir *Jarvis Ellowis* was likewiſe Hang'd for the ſame on *Monday*, *November* the 20th following. The Viſcount and Counteſs were likewiſe found guilty of the ſaid Murder, for which they were committed to the *Tower*; and although the King pardon'd them, they in a ſhort Time pined away their Lives, dying in the utmoſt Diſgrace. At this Time my Lord of *Somerſet* little thought to have been laid in the *Tower*, and made Heir of *Overbury*'s Bed-chamber; but by this Courſe we may ſee, That *all Things are in the Hands of God.*

FINIS.